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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA98

Poultry Contracts; Initiation, Performance, and Termination

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations issued under the Packers and Stockyards P&S Act, 1921, as amended, (7 U.S.C. 181 *et seq.*) (P&S Act) regarding the records that live poultry dealers must furnish poultry growers, including requirements for the timing and contents of poultry growing arrangements.

The amendments to the regulations will require that live poultry dealers timely deliver a copy of an offered poultry growing arrangement to growers; include information about any Performance Improvement Plans (PIP) in poultry growing arrangements; include provisions for written termination notices in poultry growing arrangements; and notwithstanding a confidentiality provision, allow growers to discuss the terms of poultry growing arrangements with designated individuals.

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

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION: As the Grain Inspection, Packers and Stockyards Administration (GIPSA), one of our functions is the enforcement of the Packers and Stockyards Act of 1921, as amended. Under authority granted to us by the Secretary of Agriculture (Secretary), we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act. Section 201.100 of the regulations (9 CFR 201.100) specifies the terms of the poultry growing arrangement that must be disclosed to poultry growers by poultry companies.

We believe that the failure to disclose certain terms in a poultry growing arrangement constitutes an unfair, discriminatory, or deceptive practice in violation of section 202 (7 U.S.C. 192) of the P&S Act.

It is common knowledge in the industry that because of vertical integration and high concentration, live poultry dealers normally present poultry growers with poultry growing arrangements on a ''take it or leave it'' basis. The poultry growers do not realistically have the option of negotiating more favorable poultry growing arrangement terms with another live poultry dealer because there may be no other live poultry dealers in the poultry grower's immediate geographic area or there may be significant differences in equipment requirements among live poultry dealers. There is considerable asymmetry of information and an imbalance in market power. Growers sometimes do not know or understand the full content of their own poultry growing arrangement with the poultry companies and are constrained by confidentiality clauses from discussing their poultry growing arrangement with business advisers. This final rule ensures that all poultry growers are fully informed and can make sound business decisions prior to entering into a poultry growing arrangement with a live poultry dealer. In addition, growers often have much of their net worth invested in poultry houses, which have limited value for purposes other than raising and caring for poultry. At the same time, live poultry dealers may have a staff of accountants, economists, attorneys and other business advisors whose job is to perform market research and advise the live poultry dealers' management on how poultry growing arrangements with poultry growers should be structured to protect the live poultry dealers' financial interests. Growers who have invested heavily in poultry houses may face the choice of signing a poultry growing arrangements in which disclosure of terms is incomplete and/or not provided in a timely fashion or facing financial difficulties, including possibly exiting the poultry growing business or going bankrupt. In some cases, live poultry dealers already provide complete information in a timely fashion. This final rule, however, will level the playing field by requiring that all live poultry dealers adopt fair and transparent practices when dealing with poultry growers.

The failure of a live poultry dealer to deliver a written poultry growing arrangement in a timely manner is considered by GIPSA to be an unfair and deceptive practice because growers could not otherwise know what the poultry growing arrangement terms will be or whether the terms accurately reflect the agreement reached between the parties. This practice could also be considered discriminatory if some growers receive written poultry growing arrangements in a timely fashion and others do not. A live poultry dealer's failure to include written notice of termination procedures in the poultry growing arrangement and failure to provide a written notice of termination is also considered unfair, discriminatory and deceptive for the same reasons.

A live poultry dealer's failure to include information about Performance Improvement Plans (PIPs) is similarly unfair and discriminatory if some growers receive this information and others do not, and deceptive if growers are unaware that such a program exists until they fail to meet a minimum performance threshold that was not specified in their poultry growing arrangement.

GIPSA considers prohibiting growers from discussing poultry growing arrangement terms with business advisers unfair because growers are not typically attorneys or accountants. Depriving growers of professional advice before they commit to a poultry growing arrangement, particularly when the live poultry dealers have access to such advice in drafting their poultry growing arrangements, is considered unfair as well.

Current Poultry Contracting Practices

The market for poultry is vertically integrated and highly concentrated. For example, USDA–GIPSA reported in

2005 that the top four poultry slaughterers represented 53 percent of the total market share based on volume of production.[1] A majority of the nation's 20,637 poultry growers essentially receive poultry growing arrangements on a ''take it or leave it'' basis from a small number of live poultry dealers.[2] While this concentration of live poultry dealers represents certain economies of scale, it also represents a potential for asymmetrical information and a lack of transparency that can lead to market inefficiencies.

Live poultry dealers accept much of the short term financial risk. Poultry growers take the longer term financial risk by investing in the poultry houses and equipment. Live poultry dealers often use a tournament or bonus compensation system in which poultry growers compete with each other over a given period of time. Growers, who in the opinion of the live poultry dealer consistently underperform, may be placed on a PIP, have their current poultry growing arrangement terminated, or not be offered a new poultry growing arrangement or have their existing poultry growing arrangement extended.

The current contracting process may involve verbal agreements that are made prior to delivery of a written poultry growing arrangement. The process by which new poultry growers are recruited can be informal word-of-mouth, although some poultry companies solicit new growers via their Web site. Prospective poultry growers must have a line of credit sufficient to finance the construction of poultry houses in order to be a successful applicant. A live poultry dealer typically inspects a prospective grower's property to verify that the grower has sufficient space and suitable soil conditions on which to place the houses, has right of way capable of supporting truck traffic, and has means to dispose of dead birds and bird waste. The discussion between a live poultry dealer and prospective poultry growers to verify these conditions often involves verbal commitments, and therefore growers may not have a comprehensive grasp of all their rights and obligations. Likewise, growers with existing poultry growing arrangements may make similar verbal commitments for poultry house improvements to the live poultry dealer. Currently, a poultry grower may receive specifications for the poultry houses from a live poultry dealer and use those specifications to obtain a construction loan from a lender prior to receiving a written poultry growing arrangement from the poultry company. While most new growers typically receive written poultry growing arrangements at about the same time they receive the specifications for the poultry houses, some live poultry dealers do not provide growers with written poultry growing arrangements until after construction of the poultry houses has already started.

The regulations issued under the P&S Act currently protect poultry growers by requiring that the poultry growing arrangement include, for example, the per unit charges for feed and other inputs furnished by each party, the duration of the poultry growing arrangement and conditions for its termination, and the factors to be used when grouping or ranking poultry growers.

The requirements contained in this final rule are intended to help both poultry growers and live poultry dealers by providing the growers with more information about the poultry growing arrangement at an earlier stage. This final rule will ''level the playing field'' by requiring live poultry dealers to include these provisions in all poultry growing arrangements. Growers will have more information upon which to decide whether to accept the terms of the poultry growing arrangement. Growers will benefit from a freer flow of information and better pricing efficiencies because they are able to discuss the terms of their poultry growing arrangement with business and financial professionals before committing to building or upgrading poultry houses. With these requirements, poultry growers will be informed of the criteria used to place them on a PIP. Live poultry dealers will benefit from having growers who better understand the obligations of their poultry growing arrangement and benefit further by having more specific contract language to resolve performance issues and the termination of their poultry growing arrangements.

Notice of Proposed Rulemaking

GIPSA published a Notice of Proposed Rulemaking in the **Federal Register** on August 1, 2007, (72 FR 41952) seeking comments on amending the regulations issued under the P&S Act to require that poultry companies timely deliver a copy of an offered poultry growing arrangement to growers; to include information about any PIPs in poultry growing arrangements; to include provisions for written termination notices in poultry growing arrangements; and notwithstanding a confidentiality provision, allow growers to discuss the terms of poultry growing arrangements with designated individuals. The comment period ended on October 30, 2007, and we received 449 comments on the proposed rule. Based on these comments, GIPSA will modify three of the four amendments proposed.

Discussion of Comments

We received 237 postcards containing identical comments from poultry growers. While all of these commenters supported adoption of the four amendments in the proposed rule, six commenters added wording of their own in the margins of the postcards. Three of the six written comments referenced housing specification requirements and two commenters suggested that we extend the duration of poultry growing arrangements for longer periods than typically stated in existing poultry growing arrangements. Because these issues are not raised in the four amendments in our proposal, we are making no change to the final rule based on these five comments.

We received 92 letters containing identically worded comments from individuals identifying themselves as ''taxpayer(s).'' All comments were in support of the proposed rule, and made no suggestions for modifying the proposal.

We received 82 identical comments advocating:

- Expanding the phrase ''business advisor'' as used in the proposed rule, to include appraisers, realtors or other growers for the same company,
- Adding a provision prohibiting live poultry dealers from adding riders to poultry growing arrangements or otherwise changing the terms of poultry growing arrangements after the grower ''sees the first [poultry growing arrangement],''
- Prohibiting the placing of growers on PIPs for factors beyond their control,
- Requiring poultry growing arrangements to include information regarding the financial consequences of placement on PIPs, and
- Requiring that live poultry dealers give poultry growers at least 180 days written notice of termination.

We received 38 additional comments from individuals and trade associations which varied in their response to our proposed amendments. These 120 additional comments are discussed below.

As stated above, commenters advocated expanding the phrase ''business advisor'' as used in proposed

[1] ''Assessment of the Livestock and Poultry Industries, FY 2006 Report'' *http://archive.gipsa.usda.gov/pubs/06assessment.pdf.*

[2] Data compiled from live poultry dealer annual reports filed with GIPSA.

§ 201.100(b) to include appraisers, realtors, or other growers for the same live poultry dealer. We are not in favor of adding appraisers and realtors to the list of those with whom growers may discuss their poultry growing arrangements. We believe that appraisers and realtors should not look to a current grower's poultry growing arrangement for guidance on property values.

We see no benefit for a live poultry dealer to forbid its growers from discussing the terms of their poultry growing arrangements with each other. To do so would impede the growers' ability to determine whether they have been treated unfairly or discriminated against in violation of the P&S Act. We will therefore include poultry growers who have entered into poultry growing arrangements with the same live poultry dealer in the final rule based on the comment received.

One commenter suggested that we add family members, banks and anyone on a need-to-know basis to the list of ''business advisors'' in proposed § 201.100(b). Another suggested that we allow growers to discuss their contracts with attorneys and farmer organizations. Section 10503 of the Farm Security and Investment Act of 2002 (7 U.S.C. 229b) clearly sets forth that a party to the poultry growing arrangement shall not be prohibited from discussing any terms or details of the poultry growing arrangement with: (1) A Federal or State agency; (2) a legal advisor to the party; (3) a lender to the party; (4) an accountant hired by the party; (5) an executive or manager of the party; (6) a landlord of the party; or (7) a member of the immediate family of the party. We believe that, with the exception of farmer organizations and poultry growers who have entered into poultry growing arrangements with the same live poultry dealer, the groups enumerated in the proposed regulation encompass those named by the commenters. While we are not including farmer organizations in the final rule, we are adding poultry growers who have entered into poultry growing arrangements with the same live poultry dealer. The remaining individuals and groups named in the regulation reflect those named in the statute. We consider ''Immediate family'' to means an individual's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of the foregoing, and the individual's spouse in accordance with the definition under the Federal crop insurance program, administered by USDA's Farm Service Agency.

Commenters suggested that we add a provision to proposed § 201.100(a) to prohibit live poultry dealers from adding riders to poultry growing arrangements or otherwise changing the terms of poultry growing arrangements after the grower ''sees the first one.'' We believe that the switching of poultry growing arrangements after the grower ''sees the first one'' is not a common problem in the poultry industry. The final rule, however, will require that live poultry dealers give growers a ''true written copy'' of the offered poultry growing arrangement. Some poultry growing arrangements are flock-to-flock agreements. A true written copy of a poultry growing arrangement must cover the production of at least one flock. If a live poultry dealer makes changes to the original poultry growing arrangement, or substitutes a new poultry growing arrangement for the ''true written copy'' that was provided at the same time as the house specifications, but prior to picking up a new grower's first flock, there is a basis for questioning whether the original poultry growing arrangement is the ''true written copy'' of the parties' agreement. Based on the above analysis of these comments, we believe that no change to the final rule is necessary.

A comment received from a poultry grower organization requested that we require a live poultry dealer to disclose fully the existence (or the lack thereof) of the company's PIP program in its poultry growing arrangements. A comment filed by another suggested that all original poultry growing arrangements disclose fully a live poultry dealer's PIP information. The commenter stated that a live poultry dealer should not be able to add riders containing PIP clauses to existing poultry growing arrangements. We have reviewed our proposal and agree with the comments. We will therefore modify § 201.100(c) in the final rule to require that a live poultry dealer specifically disclose in all future poultry growing arrangements whether it has a PIP program in existence and the guidelines for the program.

Commenters advocated prohibiting live poultry dealers from placing growers on PIPs for factors beyond their control. We acknowledge that all growers run the risk of having a flock perform poorly for reasons they may not control. We have found that placement on a PIP, however, generally does not occur unless a grower performs poorly over an extended period of time. If a poultry grower believes a live poultry dealer systematically has manipulated inputs to the grower's disadvantage, GIPSA can investigate the grower's complaint. However, prohibiting live poultry dealers from placing growers on PIPs because of factors beyond the control of growers is vague and could result in both growers and live poultry dealers being uncertain of when PIPs are justified, and are so subjective that GIPSA might be asked to investigate every PIP placement made. Moreover, it is impractical for us to attempt to list every possible factor not under the control of growers that could negatively affect performance. We are therefore making no change to § 201.100(c) in the final rule based on these comments.

Comments received recommended that we require that live poultry dealers state in their poultry growing arrangements the financial impact poultry growers would face if placed on a PIP. We have found that live poultry dealers often place smaller flocks on the farms of poultry growers on PIPs. This may allow these growers to manage a flock more easily and efficiently. Poultry growers on PIPs may experience other adjustments to normal practices intended to help them prepare fully for raising and caring for poultry. These changes, while helping to improve performance, may reduce payouts to PIP growers. We believe that poultry growers need to know what changes to normal practices will occur when placed on a PIP so they may better judge how placement on a PIP will affect them.

One association commented that advanced notice of termination would be especially problematic and impractical to implement for growers on PIPs. In most cases, they said, the decision to terminate a grower could not be made until the last flock had been picked up, processed and the results analyzed. This rule would allow the live poultry dealer to follow through on the PIP, including picking up and processing the flock before making a decision regarding whether the grower met the conditions of the PIP. If the grower did not meet the conditions of the PIP, the live poultry dealer would then provide notice of termination. The notification that the grower did not meet the PIP and the termination notice would be sent at the same time. Allowing a live poultry dealer to provide written termination notices to a grower on a PIP after picking up the last flock would not allow the PIP grower sufficient time to establish business relationships with other live poultry dealers. GIPSA believes poultry growers on PIPs should receive advance written notice of termination in the same

manner prescribed for poultry growers not on PIPs. Therefore, GIPSA will make no change to the final rule based on the above comment.

Commenters requested that we modify our proposal to require that poultry growers receive written notice of termination at least 180 days in advance of the date the termination would be effective. The majority of the comments submitted recommended that poultry growers receive a minimum of 180 days written termination notice. Another commenter wrote that he/she typically receives only 10 days notice of termination, but the commenter did not specifically suggest what the minimum number of days should be. The minimum number of days of advance written notice of termination recommended by other commenters ranged from 30 days to 2 years. Lastly, one commenter recommended that we prohibit the termination of poultry growing arrangements for growers with federally guaranteed loans.

Most poultry growing arrangements contain clauses that state that the live poultry dealer will provide written notice of termination to growers. We have found in most cases that these clauses provide a minimum number of days advance notice of termination that a grower will receive under the poultry growing arrangement. The minimum number of days varies from 3 to 30 days prior to picking up the final flock, or prior to the anticipated delivery date for the next flock.

The majority of comments to the notice of proposed rulemaking indicate 30 days advance notice of termination is insufficient to allow poultry grower's time to make other business arrangements. The majority of the commenters recommended that we change the time period for requiring advance written notice of termination from 30 days to 180 days. On review, we agree that 30 days is not sufficient enough time to provide an opportunity for a live poultry dealer or grower to make business adjustments. However, we believe that 180 days is too long and may be a burden on the party that intends to terminate the agreement. In reviewing the concerns raised by the comments that advocated the 180 day period, we believe that 90 days advance written notice of termination should be adequate in order to give the affected parties time to make adjustments in their business operations. This is especially important given the long-term financial risks that an affected party may face. This change will provide the grower with more time to work with the live poultry dealer to improve his/her performance, obtain legal and/or financial advice or guidance, obtain a new contract with a new live poultry dealer, and/or sell his/her poultry growing business. We are therefore changing § 201.100(h) in the final rule based on the comments discussed above to require that written termination notices be provided by one party to the other at least 90 days prior to the effective date of termination of the poultry growing arrangement.

Many commenters suggested that we expand the requirements for written termination notices to include situations in which a live poultry dealer discontinues an existing poultry growing arrangement, or elects not to renew or replace an expiring poultry growing arrangement. The commenters said that the requirement for written termination notices should encompass all situations where one party ends the poultry growing relationship. In our reviews of agreements, we have found that poultry growing arrangements have a set duration, such as 1-year or flock-to-flock. We believe that our proposed amendment works well in situations where one party chooses to end the poultry growing arrangement before the termination date noted in the arrangement. A live poultry dealer could also end its relationship with a grower by simply allowing a poultry growing arrangement to expire without renewal or offer of replacement. A live poultry dealer may also discontinue the use of an established poultry growing arrangement and offer a different agreement in its place—one that the poultry grower may or may not accept. Requiring written notice of termination in all situations where one party elects to end the poultry growing relationship would ensure that a grower is informed when termination is imminent no matter what manner or reason is used for termination. Under these circumstances, we will modify § 201.100(h) in the final rule to require written notice of termination in instances of a poultry growing arrangement's termination, expiration, non-renewal and non-replacement.

Many commenters recommended that we remove language referencing ''pen and paper'' in proposed § 201.100(h). The commenters believe that the reference to ''pen and paper'' is confusing and that the term ''written'' is sufficient. We agree with the commenters that the phrase could be confusing and will modify the amendment in the final rule to delete the phrase ''pen and paper.''

Commenters also urged GIPSA to require that the delivery of written termination notices be made by certified mail, return receipt requested. The commenters argued that e-mail terminations were not acceptable because verifying that an e-mail was sent and received is difficult.

Our proposal requires that live poultry dealers ''provide'' poultry growers with written termination and does not favor one mode of delivery over another. We believe that any mode of delivery, whether it is by regular mail, certified mail, registered mail, overnight mail, e-mail, facsimile, or personal service is acceptable as long as notice is ''provided.'' Proof that written notice was ''provided'' is the responsibility of the live poultry dealer. GIPSA's past poultry investigations reveal that most live poultry dealers send written termination notices by verified delivery means. We believe that live poultry dealers should not be restricted to a specific mode of delivery of a notice of termination. Therefore, we are making no change to the final rule based on the above comments.

One comment suggested that growers should receive less than 30 days written advance notice of termination. That commenter was concerned that once a live poultry dealer gave notice of the termination of a poultry growing arrangement for cause, the grower would neglect the flocks in its possession. Poultry growing arrangements contain clauses allowing live poultry dealers to enter upon the property of poultry growers in order to raise and care for flocks that the live poultry dealer believes may not be receiving adequate care. Once written termination notice is provided to the poultry grower, if the live poultry dealer believes the poultry grower is not providing sufficient care, the live poultry dealer can exercise its right to raise and care for the flock. We will therefore not modify § 201.100(h) in the final rule to permit a shorter period for advance notice of termination as suggested.

According to one commenter, growers should have 14 days to accept or reject a new or the renewal of an existing poultry growing arrangement. We believe that a 14-day rejection period is unnecessary provided that the grower receives a true written copy of the offered poultry growing arrangement from the live poultry dealer at the time that the grower receives the poultry house specifications for the offered poultry growing arrangement. This should give the grower sufficient time to read the poultry growing arrangement, consult with advisors, and decide whether to sign the poultry growing arrangement before committing to loans. Therefore, we are making no change to the final rule based on the comment.

The commenter agreed with the proposed rule for timely delivery of poultry growing arrangements to growers presented in the August 1, 2007 notice. The commenter, however, suggested in this same section that we also require that subsequent changes to poultry growing arrangements, whether in oral or written form, be incorporated into a new true written complete copy and presented as a new offer of a poultry growing arrangement, not as a unilateral change to the existing poultry growing arrangement. Because this suggestion is outside the scope of our proposal for the timely delivery of poultry growing arrangements to growers, we are making no change to the final rule based on the comment.

One commenter recommended that we require that live poultry dealers provide growers with a letter of intent or written approval of a grower in addition to the poultry growing arrangement. Another commenter recommended that we also require delivery of letters of intent or written grower approvals at the same time the live poultry dealer provides the poultry house specifications. While a letter of intent is a written record of a live poultry dealer's intention to sign or enter into a poultry growing arrangement with a grower, we believe that the poultry growing arrangement would contain the substantive information that a grower would need in order to decide if he/she will grow poultry for a live poultry dealer. Also, linking the delivery of poultry growing arrangements with receiving a letter of intent would not necessarily guarantee that the prospective grower would receive his/her poultry growing arrangement before committing to a construction loan for poultry houses. We believe that the delivery of a poultry growing arrangement should instead be linked to the receipt of the poultry house specifications so that a grower is assured of his/her contractual relationship with the live poultry dealer prior to financing a construction loan. We are therefore making no changes to § 201.100(c) in the final rule based on these comments.

One comment argued that it is not necessary to require that live poultry dealers deliver poultry growing arrangements at the time written house specifications are delivered. The commenter said that provisions for delivery are normally addressed in poultry growing arrangements between live poultry dealers and growers. Since we have received numerous complaints regarding the slow delivery of poultry growing arrangements, we continue to believe that our proposed amendment regarding the timing of the delivery of poultry growing arrangements is needed. We are therefore making no change to the final rule based on that comment.

One organization said that we should require that live poultry dealers give growers information about the feed and medications supplied to them. They also wanted growers on PIPs to have the right to reject flocks. One individual argued that live poultry dealers should be required to let growers see the hatchery and mortality records of other growers in their settlement groups so they could judge the fairness of the performance rankings. We are not requiring that live poultry dealers provide information on feed, medications, hatchery origins or mortality rates of poultry growers by other growers. If a poultry grower believes a live poultry dealer has systematically manipulated inputs to the grower's disadvantage, the grower may choose to report their complaint to GIPSA for investigation. Furthermore, these issues go beyond the scope of the subject matter of the proposed rule. We are therefore making no change to the final rule based on this comment.

Finally, the amendments in the proposed rule for ''Written Termination Notice; furnishing, contents'' listed three items that termination notices must contain. In addition, the phrase, ''In the case of termination * * *.'' was inadvertently included in the proposed regulatory text and will be removed from § 201.100(h) in the final rule. The authority citation in the proposed rule has also been revised in the final rule to reference the entire P&S Act (7 U.S.C. 181–229c) as the authorizing statute. The authority citation has been further revised in the final rule to delete references to 7 CFR 2.22 and 2.81, which refer to the delegation of authority of the Secretary of Agriculture to administer the P&S Act to the Under Secretary for Marketing and Regulatory Programs, and to further delegate that authority to the Administrator of GIPSA, respectively. For clarity and consistency with the statutory definition of a poultry growing arrangement, we are also replacing the term ''contract'' with the term ''poultry growing arrangement'' everywhere the word ''contract'' appears throughout the final rule. In addition, proposed new paragraph (h) has been revised in the final rule into (h), (h)(1), (h)(1)(i), (h)(1)(ii), (h)(1)(iii), and (h)(2) in order to make the regulatory text clearer.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be significant for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this final rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866. The provision in this final rule addresses the records that live poultry dealers must furnish poultry growers, including the requirements for the timing and contents of poultry growing arrangements. Vertical integration and high concentration in the poultry industry cause considerable asymmetry of information, lack of transparency, and an imbalance in market power.

The asymmetry of information at the time of contract negotiation, and the initial fixed investments poultry growers must pay to enter into the poultry growing business, make the typical grower vulnerable to hold-up costs.[3] Hold-up costs arise in poultry production because of the relatively high fixed costs incurred by poultry growers for poultry houses that have no value outside of poultry production.[4] For example, without full and timely information, the poultry grower may not be able to negotiate compensation rates that effectively cover all costs, including annualized depreciation on its fixed investment. An incentive exists for the live poultry dealer to compensate the grower at a rate that covers all but a portion of the grower's annualized depreciation cost.[5] The poultry grower has no recourse after signing a contract with a live poultry dealer but is responsible for a large investment. The poultry grower cannot likely sell the investment and leave the business because a poultry house has no value outside the poultry business. If the poultry grower chooses to stay in business, however, the grower may

[3] Nigel Key and Jim M. MacDonald. ''Local Monopsony Power in the Market for Broilers? Evidence from a Farm Survey'' selected paper American Agri. Economics Assn. meeting Orlando, FL, July 27–29, 2008.

[4] The empirical evidence for hold-up costs is discussed by T. Vukina and P. Leegomonchai in ''Oligopsony Power, Asset Specificity, and Hold-up: Evidence from the Broiler Industry'', Amer. J. of Agri. Economics, pp. 589–605, Aug., 2006. A general discussion of the hold-up problem by Paul Milgrom and John Roberts is found in ''Economics, Organization, and Management'' pg. 136, 1992.

[5] Rachael E. Goodhue, Gordon C. Rausser, and Leo K. Simon discuss poultry contracts and grower compensation issues in: ''Understanding Production Contracts: Testing Agency and Theory Model'' selected paper American Agric. Economics meetings Salt Lake City, UT, May 15, 1998.

learn too late that its earnings will not cover as much of the costs as originally expected.

Poultry growers have few options for negotiating more favorable contract terms among live poultry dealers because of geographic distance or equipment requirements. Growers often have much of their net worth invested in poultry houses, which have limited value for purposes other than raising and caring for poultry. And, without full and timely information, growers sometimes do not know or understand the full content of their own poultry growing arrangements with the live poultry dealers and are constrained by confidentiality clauses from discussing their terms with business advisers. These factors combined lead to market failures that cannot be resolved through private treaty negotiation to achieve an efficient market solution.[6] GIPSA believes that § 201.100(b) of this final rule will free poultry growers from these constraints by allowing them to discuss the terms of their poultry growing arrangements with business and financial advisors. By fostering the flow of business and financial information to growers, this final rule will lead to greater pricing efficiencies in the poultry industry.

GIPSA has considered and collected input on potential alternative and believes that no viable alternatives to this final rule exist. This final rule imposes on live poultry dealers primarily office costs (e.g. revising poultry growing arrangements). GIPSA believes that these costs will be significantly less than the benefits that will be achieved from a reduction in general market inefficiencies.

Copies of the analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The Small Business Administration (SBA) defines small businesses by its North American Industry Classification System Codes (NAICS).[7] The affected entities and size threshold under this final rule are defined by the SBA under NAICS codes, 112320 and 112330, broiler and turkey producers, respectively, if sales are less than $750,000 per year. Live poultry dealers, NAICS code 31165, are considered small businesses if they have fewer than 500 employees.

GIPSA maintains data on live poultry dealers from the annual reports that these firms file with the agency. Currently, there are 140 live poultry dealers (all but 16 are also poultry slaughterers and would be considered poultry integrators) that will be subject to this final rule. According to U.S. Census data on County Business Patterns, there were 64 poultry slaughters firms that had more than 500 employees in 2006. The difference yields approximately 75 poultry slaughters/integrators with fewer than 500 employees and would be considered as small business that will be subject to this final rule.

Another factor, however, which is important in determining the economic effect of the regulations, is the number of poultry growing arrangements held by a live poultry dealer. Poultry growers enter into a poultry growing arrangement with one live poultry dealer, whereas a live poultry dealer may have a number of poultry growing arrangements with many growers. While growers may have sophisticated growing facilities, many are independent family owned businesses that are focused on growing poultry to the specifications outlined in their poultry growing arrangements. Most live poultry dealers, however, are much larger integrated commercial entities that breed, hatch, slaughter and process poultry for the retail market. Given the business size differential between a poultry grower and a live poultry dealer and the regional monopsony power a live poultry dealer may have, the live poultry dealer has much more information to consider when establishing the terms of and entering into a poultry growing arrangement. The live poultry dealer is much more likely to have a staff of financial and business advisors on which to rely. By contrast, the poultry grower operating under an existing poultry growing arrangement may not be allowed to share the terms of the poultry growing arrangement with its advisors.

GIPSA records for 2007 indicated that there were 20,637 poultry growing arrangements of which 13,216, or 64 percent, were held by the largest 6 live poultry dealers, and 95 percent (19,605) were held by the largest 21 live poultry dealers. These 21 live poultry dealers are all in SBA's large business category, whereas the 19,605 poultry growers holding the other side of the poultry growing arrangement are all small businesses by SBA's definitions. The situation in general for the nation's poultry growers operating under poultry growing arrangements is that the growers are almost all small businesses with a poultry growing arrangement held by one of the very large live poultry dealers. To illustrate the magnitude in size differences between the growers and the live poultry dealer, using grower gross sales revenue of $750,000 per year and the average gross sales revenue of three of these very large live poultry dealers, yields a ratio of roughly 1:23,000. We believe that providing poultry growers with the ability to discuss the terms of their poultry growing arrangements with business and financial advisors will enable the growers to make more informed decisions as they negotiate the terms of their poultry growing arrangements with the live poultry dealer. This final rule will help to level the playing field for poultry growers by providing them with access to financial and business information and advice that is accessible to live poultry dealers, and therefore will help to balance market asymmetric inequities.

Although the costs and benefits are largely intangible, GIPSA believes that the costs to both poultry growers and live poultry dealers firms will be essentially negligible. This final rule does not impose significant additional requirements on the actions firms must enact; merely the timeliness of those actions. While this final rule requires that poultry growers and live poultry dealers commit in writing to terms and conditions that are already in effect, it does not mandate what those terms and conditions must be. Thus, the only additional cost is simply the cost of producing and transmitting the printed document. GIPSA did not receive any comments from live poultry dealers or others that suggested that there would be any significant costs of implementing the provisions in this final rule.

Collectively, the provisions in this final rule mitigate potential asymmetries of information between poultry growers and live poultry dealers, which lead to better decisions on the terms of compensation and reduce the potential for expressions of anti-competitive market power. The provisions in this final rule achieve this primarily through improved quality and timeliness of information to poultry growers, and to some extent to live poultry dealers as well. Benefits will accrue to growers from an improved basis for making the decision about whether to enter into a poultry growing arrangement, and from

[6] Paul Milgrom and John Roberts discuss market failure arising in the context of property rights imperfection as developed here in ''Economics, Organization, and Management'', 1992, Chap. 9, Ownership and Property Rights. Note, for perfectly efficient property rights structures resources must be privately held and entitlements completely specified. All benefits and costs of ownership accrue to the owner. All property rights are transferable from one owner to another in voluntary exchange. And all rights from ownership are enforceable and secure from involuntary seizure.

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

additional time available to plan for any adjustments in instances when the grower is subject to termination of a poultry growing arrangement. GIPSA also believes that live poultry dealers will also benefit from this final rule because all live poultry dealers will be required to provide poultry growers the same information in a full and timely manner. Disclosure of this information between the live poultry dealer and the poultry grower will lead to greater transparency in the poultry industry and promote fairer competition among live poultry dealers. In addition, GIPSA believes that net social welfare will benefit from improved accuracy in the value (pricing) decisions involved in transactions between poultry growers and live poultry dealers as they negotiate poultry growing arrangements.

Based on the discussion in the analysis above, GIPSA therefore has determined that the effect on all small businesses will not have a significant economic impact on a substantial number of small business entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This final rule will not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Paperwork Reduction Act

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

Government Paperwork Elimination Act Compliance

We are committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies provide the public with the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 9 CFR Part 201

Contracts, Poultry and poultry products, Trade practices.

■ For the reasons set forth in the preamble, we amend 9 CFR part 201 to read as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Amend § 201.100 to redesignate paragraphs (a), (b), (c), (d), and (e) as (c), (d), (e), (f) and (g); add new paragraphs (a), (b), (c)(3), and (h); remove ''and'' at the end of newly designated paragraph (c)(1), remove ''.'' at the end of newly designated paragraph (c)(2)(v), add ''; and'' at the end of newly designated paragraph (c)(2)(v), and revise the introductory text of newly designated paragraph (c) to read as follows:

§ 201.100 Records to be furnished poultry growers and sellers.

(a) *Poultry growing arrangement; timing of disclosure.* As a live poultry dealer who offers a poultry growing arrangement to a poultry grower, you must provide the poultry grower with a true written copy of the offered poultry growing arrangement on the date you provide the poultry grower with poultry house specifications.

(b) *Right to discuss the terms of poultry growing arrangement offer.* As a live poultry dealer, notwithstanding any confidentiality provision in the poultry growing arrangement, you must allow poultry growers to discuss the terms of a poultry growing arrangement offer with:

(1) A Federal or State agency;

(2) The grower's financial advisor or lender;

(3) The grower's legal advisor;

(4) An accounting services representative hired by the grower;

(5) Other growers for the same live poultry dealer; or

(6) A member of the grower's immediate family or a business associate. A business associate is a person not employed by the grower, but with whom the grower has a valid business reason for consulting with when entering into or operating under a poultry growing arrangement.

(c) *Contracts; contents.* Each live poultry dealer that enters into a poultry growing arrangement with a poultry grower shall furnish the grower with a true written copy of the poultry growing arrangement, which shall clearly specify:

* * * * *

(3) Whether a performance improvement plan exists for that grower, and if so specify any performance improvement plan guidelines, including the following:

(i) The factors considered when placing a poultry grower on a performance improvement plan;

(ii) The guidance and support provided to a poultry grower while on a performance improvement plan; and

(iii) The factors considered to determine if and when a poultry grower is removed from the performance improvement plan and placed back in good standing, or when the poultry growing arrangement will be terminated.

* * * * *

(h) *Written termination notice; furnishing, contents.*

(1) A live poultry dealer that ends a poultry growing arrangement with a poultry grower due to a termination, non-renewal, or expiration and subsequent non-replacement of a poultry growing arrangement shall provide the poultry grower with a written termination notice at least 90 days prior to the termination of the poultry growing arrangement. Written notice issued to a poultry grower by a live poultry dealer regarding termination shall contain the following:

(i) The reason(s) for termination;

(ii) When the termination is effective; and

(iii) Appeal rights, if any, that a poultry grower may have with the live poultry dealer.

(2) A live poultry dealer's poultry growing arrangement with a poultry grower shall also provide the poultry grower with the opportunity to terminate its poultry growing arrangement in writing at least 90 days prior to the termination of the poultry growing arrangement.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–28947 Filed 12–2–09; 8:45 am]

BILLING CODE 3410–KD–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AD63

National Credit Union Share Insurance Fund Premium and One Percent Deposit

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Section 741.4 of NCUA's rules describes the procedures for the capitalization and maintenance of the National Credit Union Share Insurance

Fund (NCUSIF). The current rule, however, does not adequately address how credit unions that enter or depart the NCUSIF system in a given calendar year are affected by any NCUSIF premium or deposit replenishment assessments in that same year. NCUA is now adopting amendments to § 741.4 to clarify these procedures. The final rule also adds Appendix A to Part 741, which repeats various examples of the application of § 741.4, as discussed in the preamble to the proposed rule.

DATES: This rule is effective January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540; and Paul Peterson, Director, Applications Section, Office of General Counsel, National Credit Union Administration, at the same address and telephone number.

SUPPLEMENTARY INFORMATION:

A. Background and Comments

NCUA proposed amendments to § 741.4 in July 2009. 74 FR 36618 (July 24, 2009). The amendments address how a credit union that enters NCUSIF coverage, or departs from NCUSIF coverage, in any given year calculates its share of any deposit replenishment assessment, premium assessment, or equity distribution in that year.

As described in the preamble to the proposed rule, both the Federal Credit Union Act (Act) and the prior version of § 741.4 address NCUSIF's authority to assess federally insured credit unions for deposit replenishment and premiums when necessary to maintain NCUSIF's equity ratio. 74 FR 36618, 36619 (July 24, 2009). The current rule, however, does not clearly state NCUA's policy for calculating NCUSIF premium or deposit replenishment assessments for credit unions that enter or depart the NCUSIF system in a year when an assessment occurs. This final rule amends § 741.4 to clarify these issues and other related issues.

NCUA received five comment letters on the proposal—two from national credit union trade associations, two from state credit union leagues, and one from an individual credit union. All commenters expressed support for the proposal and found it a helpful clarification of NCUA's current policies. Except as noted below, the Board is now adopting the rule as proposed.

Two commenters requested the final rule include a requirement for NCUA to provide detailed information about the cause, type, and amount of NCUSIF's expenses in connection with any assessments. The Board has not adopted such a requirement. By definition, all of NCUSIF's expenses result from insuring member shares, providing special assistance to avoid liquidation, and related administrative expenses. 12 U.S.C. 1783(a). Premium and one percent deposit replenishment assessments occur when NCUSIF expenses cause its equity ratio and/or available asset ratio to fall below certain levels. The Act allows NCUA to assess premiums when NCUSIF's equity ratio falls below the normal operating level established by the Board and requires NCUA to assess premiums when the equity ratio falls below 1.2 percent. 12 U.S.C. 1782(c)(2)(B)–(C). The Act also allows NCUA to expend the one percent deposit as necessary and provides for replenishment of the one percent deposit under procedures established by NCUA. 12 U.S.C. 1782(c)(1)(B)(iv).

Two commenters also expressed concern that when, as now, NCUSIF assessments resulting from expenses incurred in one year are spread over multiple years, credit unions leaving NCUSIF and paying a pro-rated premium assessment for one year receive an unfair benefit because they escape the assessments in subsequent years. NCUA has made every attempt to treat credit unions leaving and entering NCUSIF equitably, but agrees credit unions leaving NCUSIF in the midst of a multi-year cycle of assessments may not pay their full share of the cost of NCUSIF coverage. The FCU Act requires, however, that credit unions converting to private share insurance pay pro-rated premium assessments. 12 U.S.C. 1786(d)(3). NCUA believes it is consistent with the FCU Act to also apply pro-rated premium assessments to credit unions leaving NCUSIF for other reasons, as stated in paragraph (j)(1)(iii) of the rule.

At this time, the Board is not adopting the proposed changes to § 741.4(k) and § 701.6(d) regarding late payment penalties for NCUSIF assessments and the federal credit union operating fee. The Board has decided to delay consideration of these potential changes until a later time, possibly 2011. Accordingly, the current provisions, providing for an administrative fee, interest, and the costs of collection, remain in force. One commenter on the late payment provisions asked that the regulation provide for partial waivers of late payment penalties. The Board has determined that the current language of §§ 741.4(k) and 701.6(d) would permit partial waivers. The same commenter also requested NCUA take a credit union's good faith effort to make timely payment into account when imposing penalties. The rule permits waiver ''if circumstances warrant'' and the Board will certainly consider a credit union's good faith efforts to pay in a timely manner when considering a penalty waiver request.

The only change from the current version of subsection 741.4(k) adopted in this final rule is the addition, in paragraph (4), of references to the penalties for late payment permitted under the FCU Act. The same provisions were proposed as paragraph (2) of this subsection.

The proposal specifically sought comments on whether the examples of specific calculations contained in that preamble should be incorporated in the rule text or in an appendix to the rule. The only commenter to address this issue requested including the examples in an appendix, and the final rule adopts this approach. Appendix A to Part 741 is entitled *Examples of Partial-Year NCUSIF Assessment and Distribution Calculations Under § 741.4.*

One commenter suggested the proposal would be more clear if NCUA reversed the conditional and directive clauses in subparagraphs (i)(1)(ii)–(v) and (j)(1)(ii)–(iii). NCUA considered this suggestion but believes keeping the conditional clause first in these paragraphs facilitates determination of which situation applies in a particular year.

The Board is also adopting some minor recommendations from agency staff that clarify certain terms and procedures in several sections. The final rule revises the language in paragraphs (j)(1)(i) and (j)(2)(ii) of the proposal describing how the impairment of the one percent deposit affects the refundability of the deposit. The revised language states a credit union leaving NCUSIF coverage is entitled to a refund of ''the full amount of its NCUSIF deposit paid, less any amounts applied to cover NCUSIF losses that exceed NCUSIF retained earnings.'' The Board also clarifies that for voluntary credit union liquidations, the one percent deposit refund is determined by whether any amount of the deposit has been applied to cover NCUSIF losses exceeding earnings as of the date of liquidation, which is the date members vote to liquidate. 12 CFR 710.1(b).

The Board has revised paragraph (h) to remove a possible source of confusion. The intent of the proposal was to establish a deadline for NCUA to invoice for one percent deposit replenishments. As drafted, the proposal required the invoice to be sent no later than the annual or semiannual

adjustments based on ''insured shares as of December 31.'' The reference to the adjustment and the date was potentially confusing. As the current regulation has no specific invoicing deadline and none of the comments addressed this topic, the second sentence of paragraph (h) has been simplified to ''The NCUSIF may invoice credit unions in an amount necessary to replenish the one percent deposit at any time following the effective date of the depletion.'' The Board expects that invoicing for future one percent deposit replenishments will occur as soon as practicable but does not find it necessary to set a specific deadline at this time.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule clarifies existing requirements and will not impose any new regulatory requirements. The rule will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.;* 5 CFR part 1320.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 741

Credit unions, Insurance.

By the National Credit Union Administration Board on November 19, 2009.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons set forth above, NCUA amends 12 CFR part 741 as follows.

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d: 31 U.S.C. 3717.

■ 2. Revise § 741.4 to read as follows:

§ 741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an insurance premium.

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

Available assets ratio means the ratio of:

(i) The amount determined by subtracting all liabilities of the NCUSIF, including contingent liabilities for which no provision for losses has been made, from the sum of cash and the market value of unencumbered investments authorized under Section 203(c) of the Act (12 U.S.C. 1783(c)), to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the available assets ratio is:

$$\frac{\text{(cash + market value of unencumbered investments)} - \text{(liabilities + contingent liabilities for which no provision for losses has been made)}}{\text{aggregate amount of all insured shares from final reporting period of calendar year}}$$

Equity ratio means the ratio of:

(i) The amount of NCUSIF's capitalization, meaning insured credit unions' one percent capitalization deposits plus the retained earnings balance of the NCUSIF (less contingent liabilities for which no provision for losses has been made) to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the equity ratio is:

$$\frac{\text{(insured credit unions' 1.0\% capitalization deposits + (NCUSIF's retained earnings} - \text{contingent liabilities for which no provision for losses has been made)}}{\text{aggregate amount of all insured shares}}$$

Insured shares means the total amount of a federally-insured credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law), but does not include amounts in excess of insurance coverage as provided in part 745 of this chapter. For a credit union or other entity that is not federally insured, ''insured shares'' means, for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been federally insured on the date of measurement.

Modified premium/distribution ratio means one minus the premium/distribution ratio.

Normal operating level means an equity ratio not less than 1.2 percent and not more than 1.5 percent, as established by action of the NCUA Board.

Premium/distribution ratio means the number of full remaining months in the calendar year following the date of the institution's conversion or merger divided by 12.

Reporting period means calendar year for credit unions with total assets of less than $50,000,000 and means semiannual period for credit union with total assets of $50,000,000 or more.

(c) *One percent deposit.* Each insured credit union must maintain with the NCUSIF during each reporting period a deposit in an amount equaling one percent of the total of the credit union's insured shares at the close of the preceding reporting period. For credit unions with total assets of less than $50,000,000, insured shares will be measured and adjusted annually based on the insured shares reported in the credit union's 5300 report for December 31 of each year. For credit unions with total assets of $50,000,000 or more, insured shares will be measured and adjusted semiannually based on the insured shares reported in the credit union's 5300 reports for December 31 and June 30 of each year.

(d) *Insurance premium charges*—(1) *In general.* Each insured credit union will pay to the NCUSIF, on dates the NCUA Board determines, but not more than twice in any calendar year, an insurance premium in an amount stated as a percentage of insured shares, which will be the same percentage for all insured credit unions.

(2) *Relation of premium charge to equity ratio of NCUSIF.* (i) The NCUA Board may assess a premium charge only if the NCUSIF's equity ratio is less than 1.3 percent and the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(ii) If the equity ratio of the NCUSIF falls to between 1.0 and 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to restore the equity ratio to at least 1.2 percent, as provided for in the restoration plan adopted under Section 202(c)(2)(D) of the Act (12 U.S.C. 1782(c)(20)(D)). If the equity ratio of the NCUSIF falls below 1.0 percent, the NCUA Board is required to assess a deposit replenishment charge in an amount it determines is necessary to restore the equity ratio to 1.0 percent and to assess a premium charge in an amount it determines is necessary to restore the equity ratio to, at least 1.2 percent, as provided for in the restoration plan adopted under Section 202(c)(2)(D) of the Act (12 U.S.C. 1782(c)(20)(D)).

(e) *Distribution of NCUSIF equity.* If, as of the end of a calendar year, the NCUSIF exceeds its normal operating level and its available assets ratio exceeds 1.0 percent, the NCUA Board will make a proportionate distribution of NCUSIF equity to insured credit unions. The distribution will be the maximum amount possible that does not reduce the NCUSIF's equity ratio below its normal operating level and does not reduce its available assets ratio below 1.0 percent. The distribution will be after the calendar year and in the form determined by the NCUA Board. The form of the distribution may include a waiver of insurance premiums, premium rebates, or distributions from NCUSIF equity in the form of dividends. The NCUA Board will use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the NCUSIF's equity ratio and available assets ratio for purposes of this paragraph.

(f) *Invoices.* The NCUA provides invoices to all federally insured credit unions stating any change in the amount of a credit union's one percent deposit and the computation and funding of any NCUSIF premium or deposit replenishment assessments due. Invoices for federal credit unions also include any annual operating fees that are due. Invoices are calculated based on a credit union's insured shares as of the most recently ended reporting period. The invoices may also provide for any distribution the NCUA Board declares in accordance with paragraph (e) of this section, resulting in a single net transfer of funds between a credit union and the NCUA.

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the calendar year in which it has obtained its charter will not be required to pay an insurance premium for that calendar year. The credit union will fund its one percent deposit on a date to be determined by the NCUA Board in the following calendar year, but will not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Depletion of one percent deposit.* All or part of the one percent deposit may be used by the NCUSIF if necessary to meet its expenses. The NCUSIF may invoice credit unions in an amount necessary to replenish the one percent deposit at any time following the effective date of the depletion.

(i) *Conversion to Federal insurance.*

(1) A credit union or other institution that converts to insurance coverage with the NCUSIF will:

(i) Immediately fund its one percent deposit based on the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion;

(ii) If the NCUSIF assesses a premium in the calendar year of conversion, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio;

(iii) If the NCUSIF declares, in the calendar year of conversion on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment;

(iv) If the NCUSIF declares, at any time after the date of conversion through the end of that calendar year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date; and

(v) If the NCUSIF declares a distribution in the year following conversion based the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity from the end of the preceding year, the converting institution will receive no distribution.

(2) A federally-insured credit union that merges with a nonfederally insured credit union or other nonfederally insured institution (the ''merging institution''), where the federally insured credit union is the continuing institution, will:

(i) Immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger;

(ii) With regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution's insured shares as described in paragraph (i)(1)(ii) of this section, and the other part calculated on the continuing institution's insured shares as of the last day of its most recently ended reporting period preceding the date of merger; and

(iii) If the NCUSIF declares a distribution in the year following the merger based the NCUSIF's equity at the end of the year of merger, receive a distribution based on the continuing institution's insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF's equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

(j) *Conversion from, or termination of, Federal share insurance.*

(1) A federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a noncredit union entity, will:

(i) Receive the full amount of its NCUSIF deposit paid, less any amounts applied to cover NCUSIF losses that exceed NCUSIF retained earnings, immediately after the final date on which any shares of the credit union are NCUSIF-insured;

(ii) If the NCUSIF declares a distribution at the end of the calendar year of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio; and

(iii) If the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the difference following completion of the conversion or merger.

(2) Notwithstanding the requirements of paragraph (j)(1) of this section:

(i) Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit;

(ii) Any solvent credit union that is closed due to voluntary or involuntary liquidation will be entitled to a return of its deposit paid, less any amounts applied to cover NCUSIF losses that exceed NCUSIF retained earnings, prior to final distribution of member shares; and

(iii) The Board reserves the right to delay return of the deposit to any credit union converting from or terminating its federal insurance, or voluntarily liquidating, for up to one year if the Board determines that immediate repayment would jeopardize the NCUSIF.

(k) *Assessment of administrative fee and interest for delinquent payment.* Each federally insured credit union must pay to the NCUA an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked or electronically posted later than the date stated in the invoice provided to the credit union. The NCUA may waive or abate charges or collection of interest, if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the NCUA Board based upon the administrative costs of such delinquent payments to the NCUA in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by NCUA personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and loan Rate in effect on the date when the loan payment is due as provided in 31 U.S.C. 3717.

(4) The Act contains specific penalties and other consequences for delinquent payments, including, but not limited to:

(i) Section 202(d)(2)(B) of the Act (12 U.S.C. 1782(d)(2)(B)) provides that the Board may assess and collect a penalty from an insured credit union of not more than $20,000 for each day the credit union fails or refuses to pay any deposit or premium due to the fund; and

(ii) Section 202(d)(3) of the Act (12 U.S.C. 1782(d)(3)) provides, generally, that no insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge due to the fund. Section 202(d)(3) further provides that any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned more than one year, or both.

■ 3. Add Appendix A to 12 CFR Part 741 to read as follows:

Appendix A to Part 741—Examples of Partial-Year NCUSIF Assessment and Distribution Calculations Under § 741.4

The following examples illustrate the calculation of deposit and premium assessments under each circumstance addressed in paragraphs (i) and (j) of § 741.4.

A. *Direct Conversion to NCUSIF Insurance*

1. Paragraph (i)(1)(i) provides that a credit union or other institution that converts to insurance coverage with the NCUSIF will immediately fund its one percent deposit based on the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion.

i. The following hypothetical illustrates the application of this provision. Assume Main Street Credit Union completes its conversion from nonfederal to federal insurance on May 15 of Year One. Assume further that Main Street credit union had 1,000 insured shares for the end of month in December of the previous year (Year zero), 1,100 insured shares for at the end of May, the month of conversion, and 1,200 insured shares at the end of June. This information is presented in this Table A:[1]

[1] Although Main Street Credit Union was not federally insured as of December 31 of Year Zero, proposed § 741.4(b)(3) provides that ''For a credit union or other entity that is not federally insured, 'insured shares' means, for purposes of this section only, the amount of deposits or shares that would have been insured by the NCUSIF under part 745 had the institution been federally insured on the date of measurement.''

TABLE A

	End of month, December, year zero	End of month, May, year one (month conversion completed)	End of month, June, year one
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200

ii. Paragraph (i)(1)(i) requires that on the date of its conversion, Main Street fund its one percent deposit based on ''the total of its insured shares as of the last day of the most recently ended reporting period prior to the date of conversion.'' Since Main Street has less than $50,000,000 in assets, its reporting period is annual, and ends on December 31. 12 CFR 741.4(b)(6) (definition of ''reporting period''). Main Street had $1,000 in insured shares on that date, and one percent of that is $10, and so that is the amount Main Street must immediately remit to the NCUSIF to establish its one percent deposit.

2. Paragraph (i)(1)(ii) provides that a credit union or other institution that converts to insurance coverage with the NCUSIF will, if the NCUSIF assesses a premium in the calendar year of conversion, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio * * *.

i. To illustrate the application of paragraph (i)(1)(ii), take the same facts in hypothetical A related to the conversion of Main Street from nonfederal to federal insurance. Now, further assume that on the previous March 15, NCUA had declared a premium assessment, and on September 15 following the conversion NCUA sent out the invoices for the March 15 assessment. Also assume that Main Street had grown to 1,300 insured shares at the end of September, the month the invoices were sent to Main Street and other credit unions. This information is presented in this Table B:

TABLE B

	End of month, December, year zero	End of month, May, year one (month conversion completed)	End of month, June, year one	End of month, September, year one (month invoice sent)
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200	1,300

ii. Paragraph (i)(1)(ii) requires Main Street pay a premium based on the institution's ''insured shares as of the last day of the most recently ended reporting period preceding the invoice date times the institution's premium/distribution ratio.'' Again, because Main Street is under $50 million in assets, the most recently ended reporting period preceding the September 15 invoice date is all the way back to December of Year Zero, when Main Street had $1,000 in shares. Main Street's ''premium/distribution ratio,'' as defined in § 741.4(b)(5), is ''the number of full remaining months in the calendar year following the date of the institution's conversion or merger divided by 12.'' Since Main Street completed its conversion in May, there are seven full months remaining in the calendar year (June through December), and Main Street's premium/distribution ratio is seven divided by 12. Accordingly, Main Street's premium will be assessed on $1,000 times seven divided by 12, or about $583.[2] Note that if Main Street's assets had exceeded $50 million as of June 30, it would have had semiannual reporting periods under § 741.4(b)(6), and its ''insured shares as of the last day of the most recently ended reporting period preceding the invoice date'' would have been its insured shares as of June 30, Year One, and not as of December 31, Year Zero.

3. Paragraphs (i)(1)(iii) and (iv) describe the responsibility of a credit union or other entity converting to federal insurance to replenish a depleted NCUSIF deposit, as follows: A credit union or other institution that converts to insurance coverage with the NCUSIF will, if the NCUSIF declares, in the calendar year of conversion but on or before the date of conversion, an assessment to replenish the one-percent deposit, pay nothing related to that assessment; if the NCUSIF declares, at any time after the date of conversion through the end of that calendar year, an assessment to replenish the one-percent deposit, pay a replenishment amount based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the invoice date.

i. Paragraph (i)(1)(iii) clarifies that a converting credit union has no responsibility to pay anything toward the replenishment of a depleted deposit that is declared on or before the date of conversion, even if NCUA sends out invoices related to the depletion after the date of conversion. Paragraph (i)(1)(iv) requires that a converting credit union replenish its deposit with regard to a depletion declared after the date of conversion through the end of the calendar year. Again, assume the same facts for Main Street as in Table B, but that the deposit depletion was announced in June, after Main Street converted, and that NCUA sent the invoices in September.

TABLE B

	End of month, December, year zero	End of month, May, year one (month conversion completed)	End of month, June, year one	End of month, September, year one (month invoice sent)
Main Street Credit Union's Federally Insured Shares	1,000	1,100	1,200	1,300

[2] Main Street's actual premium charge will be this $583 divided by the aggregate insured shares of all federally insured credit unions times the aggregate premium for all federally insured credit unions.

ii. Main Street would receive an invoice amount ''based on the [Main Street's] insured shares as of the last day of the most recently ended reporting period preceding the invoice date.'' Since Main Street has less than $50 million in shares, the most recently ended reporting period preceding the September invoice date was December 31, Year Zero, and it would pay for the replenishment based on $1,000 in insured shares. If Main Street, however, had had $50 million or more in assets on June 30, its most recently ended reporting period preceding the invoice date would have been the semiannual period ending on June 30, and Main Street would have used its insured shares as of June 30 to calculate the replenishment amount due to the NCUSIF.

4. Under the Federal Credit Union Act, distributions, if any, are declared once a year, early in the year, based on excess funds in the NCUSIF as of the prior December 31. Paragraph (i)(1)(v) describes the right of a credit union or other entity converting to federal insurance to receive a distribution from the NCUSIF, specifically: A credit union or other institution that converts to insurance coverage with the NCUSIF will, if the NCUSIF declares a distribution in the year following conversion based the NCUSIF's equity at the end of the year of conversion, receive a distribution based on the institution's insured shares as of the end of the year of conversion times the institution's premium/distribution ratio. With regard to distributions declared in the calendar year of conversion but based on the NCUSIF's equity at the end of the preceding year, the converting institution will receive no distribution.

i. To illustrate how paragraph (i)(1)(v) works, assume that Main Street Credit Union converts to federal insurance in May of Year One, and that the NCUA declares a distribution in January of Year Two based on the NCUSIF equity as of December 31 of Year One. Then Main Street will be entitled to a pro rata portion of the distribution, calculated on its insured shares as of December 31 of Year One times its premium/distribution ratio. Since it converted in May of Year One, and there were seven full months remaining in Year One at on the date of conversion, Main Street's premium/distribution ratio under § 741.4(b)(6) equals seven divided by 12.

ii. On the other hand, if the NCUA declared a distribution a year earlier, that is, in January of Year One based on the NCUSIF's equity ratio as of December 31 in Year Zero, then under paragraph (i)(1)(v) Main Street would receive no part of this distribution. Main Street is not entitled to any part of this distribution because Main Street, which completed its conversion in Year One, did not contribute in any way to the excess funds in the NCUSIF as of the end of Year Zero.

B. *Conversion to NCUSIF Coverage Through Merger with a Federally Insured Credit Union.*

Paragraph (i)(2) addresses the NCUSIF premiums, deposit replenishments, and distribution calculations when a nonfederally insured credit union or entity converts to NCUSIF coverage by merging with a federally insured credit union.

1. Paragraph (i)(2)(i) provides that a federally-insured credit union that merges with a nonfederally-insured credit union or other non-federally insured institution (the ''merging institution''), where the federally-insured credit union is the continuing institution, will immediately on the date of merger increase the amount of its NCUSIF deposit by an amount equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger.

i. To illustrate this provision, and the other provisions of paragraph (i)(2) related to mergers of nonfederally insured entities into federally-insured credit unions, consider the following hypothetical. Nonfederally-insured Credit Union A merges into federally-insured Credit Union B on August 15 of Year One. The relevant insured shares of Credit Union A and Credit Union B at various dates before and after the merger are reflected in Table D:

TABLE D

	End of month December, year zero	End of month June, year one	End of month August, year one (month merger completed)	End of Month September, year one (month invoice sent)
Credit Union A Insured shares	1,000	1,100	N/A	N/A
Credit Union B Insured shares	9,000	9,900	12,900	14,000

ii. Paragraph (i)(2)(i) requires that Credit Union B, the continuing credit union, immediately increase the amount of its deposit with the NCUSIF in an amount ''equal to one percent of the merging institution's insured shares as of the last day of the merging institution's most recently ended reporting period preceding the date of merger.'' Since Credit Union A, the merging institution, has less than $50 million in assets, its reporting period is the calendar year, and its most recently ended reporting period preceding the August merger date is December 31 in Year Zero. Credit Union A had $1,000 in insured shares on that date. Accordingly, Credit Union B, the continuing credit union, must immediately increase the amount of its deposit with the NCUSIF by one percent of $1,000, or $10. Note that if Credit Union A had been a larger credit union, with $50 million or more in assets on June 30 in Year One, then Credit Union B would have used Credit Union A's insured shares as of June 30 in this calculation.

2. Paragraph (i)(2)(ii), relating to NCUSIF premium assessments, provides that the continuing institution will, with regard to any NCUSIF premiums assessed in the calendar year of merger, pay a two-part premium, with one part calculated on the merging institution's insured shares as described in subparagraph (1)(ii) above, and the other part calculated on the continuing institution's insured shares as of the last day of its most recently ended reporting period preceding the date of merger.

i. Paragraph (i)(2)(ii) provides for a two-part calculation, with the first part relating to the merging credit union and the second part relating to the continuing credit union. Assuming the facts as in Table D, and assuming the premium is assessed sometime in Year One, calculate the insured shares of Credit Union A, the merging credit union, as in the example for paragraph (i)(1)(ii). Once again, because Credit Union A is under $50 million in assets, the most recently ended reporting period preceding the invoice date is December of Year Zero, when Credit Union A had $1,000 in shares. The merger was completed in August, leaving four full months in the calendar year, so the premium/distribution ratio is four divided by 12. Accordingly, this part of the premium will be assessed on $1,000 times four divided by 12, or about $333. Then calculate the insured shares of Credit Union B, the continuing credit union, ''as of the last day of its most recently ended reporting period preceding the merger date.'' Since Credit Union B is also under $50 million in assets, ''the last day of the most recently ended reporting period'' is also December 31 of Year Zero. Credit Union B's insured shares on that date were $9,000, and so the combined insured shares for purposes of the premium assessment is $9,333. Note that if Credit Union B had $50 million or more in assets on June 30 of Year One, then Credit Union B's ''most recently ended reporting period preceding the merger date'' would have been June 30 of Year One, and not December 31 of Year Zero. The Board is aware that the NCUA might declare a NCUSIF premium, invoice it, and receive the premiums in Year One from the continuing institution before the continuing institution consummates its merger. In that case, the Board would invoice the continuing credit union again after the merger, but only for the difference between the amount previously invoiced and the amount calculated under paragraph (i)(2)(ii).

3. Paragraph (i)(2)(iii) prescribes the procedures for calculating the NCUSIF distribution when a nonfederally insured credit union or entity merges into a federally insured credit union. Paragraph (i)(2)(iii)

provides that the federally insured credit union will, if the NCUSIF declares a distribution in the year following the merger based on the NCUSIF's equity at the end of the year of merger, receive a distribution based on the continuing institution's insured shares as of the end of the year of merger. With regard to distributions declared in the calendar year of merger but based on the NCUSIF's equity from the end of the preceding year, the institution will receive a distribution based on its insured shares as of the end of the preceding year.

i. This formula recognizes that the merging institution did not contribute to the NCUSIF equity as of the end of the year preceding the merger and so no distribution is allotted against the merging institution's shares. As for distributions based on the NCUSIF equity at the end of the year of merger, this formula does not include any pro rata reduction for the merging institution's contribution. The Board determined that a pro rata reduction was unnecessary, given the generally small relative size of merging institutions to continuing institutions, and the fact that the Federal Credit Union Act does not require any sort of pro rata reduction or other pro rata calculation with regard to distributions.

C. *Conversion from, or termination of, Federal share insurance.*

Paragraph (j)(1) addresses direct insurance conversions and conversions by merger. Paragraph (j)(2) addresses liquidations and insurance termination.

1. Paragraph (j)(1)(i) provides that a federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a noncredit union entity, will receive the full amount of its NCUSIF deposit paid, less any amounts applied to cover NCUSIF losses that exceed NCUSIF retained earnings, immediately after the final date on which any shares of the credit union are NCUSIF-insured.

i. To illustrate the application of this paragraph (j)(1)(i), consider the following hypothetical. Assume Anytown Credit Union, a credit union with $30 million in assets, converts from federal to nonfederal insurance on November 15. Also assume Anytown Credit Union had $20 million in insured shares as of the previous December 31, the end of its most recent reporting period. 12 CFR 741.4(b)(5), (c). The NCUSIF would return one-percent of $20 million, or $200,000 to Anytown Credit Union immediately following the effective date of its conversion. Note that, if Anytown Credit Union had reported $50 million or more in assets on June 30, then June 30 would have been the end of its most recent reporting period. Now further assume that, on July 15 of that same year, the NCUSIF had announced an expense that reduced the equity ratio from 1.3 to .75, which would have included a write-off (depletion) of 25%, or 25 basis points, of the one-percent deposit. The amount of the deposit returned to Anytown would be reduced by 25%, from $200,000 to $150,000. If the NCUSIF had announced expenses reducing the equity ratio to .75 after the November 15 conversion date, this announcement would have no effect on Anytown and it would still receive the full $200,000 from the NCUSIF.

2. Paragraph (j)(1)(ii) provides that a federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a noncredit union entity, will, if the NCUSIF declares a distribution at the end of the calendar year of conversion, receive a distribution based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the date of conversion times the institution's modified premium/distribution ratio.

i. To illustrate the application of this paragraph (j)(1)(ii), again assume Anytown Credit Union converts to nonfederal insurance on November 15, and in January of the following year, the NCUSIF declares a distribution based on the NCUSIF's equity ratio as of December 31. Anytown would receive a pro rata distribution calculated as its $20 million in insured shares multiplied by the modified premium/distribution ratio. Anytown's modified premium/distribution ratio, from the definition in § 741.4(b)(5), is one minus Anytown's premium/distribution ratio, which is one minus the ratio of the full number of months remaining in the year divided by twelve, which is one minus (one divided by twelve), which is eleven divided by twelve. So Anytown would receive a pro rata distribution based on $20 million of insured shares times eleven-twelfths, or based on about $18.33 million in shares.[3]

3. Paragraph (j)(1)(iii) provides that a federally insured credit union whose insurance coverage with the NCUSIF terminates, including through a conversion to, or merger into, a nonfederally insured credit union or a noncredit union entity, will, if the NCUSIF assesses a premium in the calendar year of conversion or merger on or before the day in which the conversion or merger is completed, pay a premium based on the institution's insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date times the institution's modified premium/distribution ratio. If the institution has previously paid a premium based on this same assessment that exceeds this amount, the institution will receive a refund of the difference following completion of the conversion or merger.

i. To illustrate these premium provisions, again assume Anytown Credit Union is a credit union with $30 million in assets that converts from federal to nonfederal insurance on November 15 of Year One, and that Anytown Credit Union had $20 million in insured shares as of the previous December 31 (of Year Zero), the end of its most recent reporting period. Further assume that NCUA declares a premium on February 12 of Year One and invoices the premium on November 15. Since the premium was declared ''on or before the day in which [Anytown's] conversion [was] completed,'' § 741.4(j)(1)(iii) applies. Anytown would then pay a premium based on $20 million (its ''insured shares as of the last day of the most recently ended reporting period preceding the conversion or merger date'') times eleven-twelfths (its ''modified premium/distribution ratio''), or based on about $18.33 million. Note that NCUA might have already have invoiced Anytown for the premium sometime between February 12 and Anytown's merger on November 15. If so, Anytown will likely receive a refund of some of this earlier premium, as provided in the last sentence of § 741.1(j)(1)(iii), since it may have overpaid the earlier premium.

[3] Anytown's actual distribution would be $18.33 million times the aggregate amount of the distribution divided by the aggregate amount of all insured shares at all federally insured credit unions.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

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RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to all Lockheed Model L–1011 series airplanes. That AD currently requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective December 18, 2009.

On June 25, 2008 (73 FR 29410, May 21, 2008), the Director of the Federal

Register approved the incorporation by reference of a certain publication listed in the AD.

We must receive any comments on this AD by January 19, 2010.

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

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

For service information identified in this AD, contact Lockheed Continued Airworthiness Project Office, Attention Airworthiness, 86 South Cobb Drive, Marietta, Georgia 30063–0567; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert A. Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 474–5583; fax (404) 474–5606.

SUPPLEMENTARY INFORMATION:

Discussion

On May 8, 2008, we issued AD 2008–11–02, Amendment 39–15524 (73 FR 29410, May 21, 2008). That AD applied to all Lockheed Model L–1011 series airplanes. That AD required revising the FAA-approved maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also required the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. The actions specified in that AD are intended to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD Was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the FAA-approved maintenance program. But once the CDCCLs are incorporated into the FAA-approved maintenance program, future maintenance actions on components must be done in accordance with those CDCCLs.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2008–11–02. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

Explanation of Additional Changes to AD

AD 2008–11–02 allowed the use of alternative CDCCLs if they are part of a later revision of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008. That provision has been removed from this AD. Allowing the use of ''a later revision'' of a specific service document violates Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use an alternative CDCCL that is part of a later revision of the referenced service document as an alternative method of compliance, under the provisions of paragraph (k) of this AD.

We have revised paragraph (g)(2) of this AD to remove information on certain approved methods. Instead we have added Note 3 to this AD to specify that guidance on certain CDCCLs can be found in the documents identified in Table 1 of this AD. We have re-identified subsequent notes accordingly. We have approved the documents in Table 1 of this AD. Operators may contact the Manager, Atlanta Aircraft Certification Office, for guidance regarding the use of the documents in Table 1 of this AD.

Explanation of Further Change to This AD

We have revised paragraphs (g), (g)(2), (h), (h)(1), and (h)(2), Note 4, and Tables 1 and 2 of this AD to remove the term ''the service bulletin,'' which is defined in paragraph (f) of this AD. We have provided the full service bulletin citation throughout this AD to avoid any confusion about which specific service bulletin is being referenced. However, we have not removed the ''Service Bulletin Reference'' paragraph from this AD. Because this AD revises AD 2008–11–02, we cannot change paragraph references, which would adversely affect compliance. Therefore, we have determined that leaving paragraph (f) of this AD unchanged is a less burdensome

approach for operators, while still adhering to standard drafting guidance.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

There are about 108 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per work hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision to incorporate FSLs and CDCCLs	4	None	$320	63	$20,160
Removal of auxiliary fuel tank No. 4, if applicable	40	None	3,200	8	25,600
Modification and inspection of the wiring harnesses of the fuel level control switch	19	$974	2,494	63	157,122
Inspection of the airplane fuel tanks, vent boxes, and bonding jumpers, and the addition of bonding jumpers to the fuel/vent tube fittings	370	18,491	48,091	63	3,029,733
Identification and inspection of the FQIS wiring harnesses	4	336	656	63	41,328

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1022; Directorate Identifier 2009–NM–163–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this 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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15524 (73 FR 29410, May 21, 2008) and adding the following new AD:

2008–11–02 R1 Lockheed: Amendment 39–16078. Docket No. FAA–2009–1022; Directorate Identifier 2009–NM–163–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 18, 2009.

Affected ADs

(b) This AD revises AD 2008–11–02, Amendment 39–15524.

Applicability

(c) This AD applies to all Lockheed Model L–1011 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been

previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) in accordance with paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) 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 2008–11–02 With Changes to Compliance Method

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the fuel system limitations (FSLs) specified in paragraphs 2.B.(1)(b), 2.B.(1)(e), 2.B.(1)(f), and 2.B.(1)(g) of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, and the critical design configuration control limitations (CDCCLs) specified in paragraph 2.C. of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008; except as provided by paragraphs (g)(1), (g)(2), and (h) of this AD.

(1) Where the FSLs specify to inspect, this AD would require doing a general visual inspection.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) For the CDCCLs specified in paragraphs 2.C.(2)(c), 2.C.(2)(d), and 2.C.(15)(a) of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, do the applicable actions using a method approved in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA.

Note 3: Guidance on certain CDCCLs can be found in the documents identified in Table 1 of this AD.

TABLE 1—APPROVED METHODS FOR CERTAIN CDCCLS

For the CDCCL identified in Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, in paragraph—	Guidance can be found in—	For—
2.C.(2)(c)	Hamilton Sundstrand Overhaul Manual 28–24–03, Revision 14, dated May 15, 2000.	Overhauling and repairing the electrically operated fuel boost pumps.
2.C.(2)(d)	Lockheed L–1011 Service Information Letter 28–12, dated March 17, 1998.	Keeping the electrical conduit for the electrically operated fuel boost pumps open and unplugged at the wing rear spar.
2.C.(15)(a)	Lockheed Drawing 1527514, Revision D, dated September 26, 1981.	Installing the fuel tank valves, auxiliary power unit pump, sight gauges, fuel quantity indicating system tank units, over-wing filler cap adapter ring, boost pump mounting plate, and access doors for the boost pump, vent box, vent valve, and fuel level control switch.

Initial Accomplishment of FSLs and Repair if Necessary

(h) At the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD, do the applicable FSLs specified in paragraphs 2.B.(1)(b), 2.B.(1)(e), 2.B.(1)(f), and 2.B.(1)(g) of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, and repair any discrepancy, in accordance with Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008. Any repair must be done before further flight.

(1) For the FSL identified in paragraph 2.B.(1)(b) of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, do the FSL before December 16, 2008.

(2) For the FSLs identified in paragraphs 2.B.(1)(e), 2.B.(1)(f), and 2.B.(1)(g) of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, do the applicable FSLs within 60 months after June 25, 2008 (the effective date AD 2008–11–02).

Note 4: Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, refers to the service information listed in Table 2 of this AD as additional sources of guidance for doing the FSLs and repair.

TABLE 2—ADDITIONAL SOURCES OF GUIDANCE FOR CERTAIN FSLS

The FSL identified in Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, in paragraph—	Refers to Lockheed Service Bulletin—	For—
2.B.(1)(b)	093–28–089, Revision 3, dated October 4, 2006	Removing auxiliary fuel tank No. 4, if applicable.

TABLE 2—ADDITIONAL SOURCES OF GUIDANCE FOR CERTAIN FSLS—Continued

The FSL identified in Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, in paragraph—	Refers to Lockheed Service Bulletin—	For—
2.B.(1)(e)	093–28–095, dated September 13, 2006	Inspecting the airplane fuel tanks and vent boxes for cleanliness and evidence of deteriorated or damaged fuel/vent tubes and components; inspecting bonding jumpers for proper installation, corrosion, frayed or broken strands, and the condition of the environmental sealing or bonding clamps and hardware; correcting any discrepant conditions; adding bonding jumpers to the fuel/vent tube fittings; and inspecting the bonding jumpers on the fuel/vent tube fittings.
2.B.(1)(f)	093–28–096, Revision 2, dated June 23, 2006	Inspecting the wiring harnesses of the No. 1 and No. 3 engine tank valves for evidence of damage and fuel contamination; replacing any damaged wire with new wire; and repairing or replacing any contaminated wires as applicable.
2.B.(1)(g)	093–28–097, dated August 3, 2006	Identifying the wiring harnesses for the fuel quantity indicator system (FQIS); inspecting the FQIS wiring harnesses for any visible damage, wear, chafing, or indications of electrical arcing; and replacing or repairing any damaged wires as applicable.

No Reporting Requirement

(i) Although Lockheed Service Bulletin 093–28–095, dated September 13, 2006; Lockheed Service Bulletin 093–28–096, Revision 2, dated June 23, 2006; and Lockheed Service Bulletin 093–28–097, dated August 3, 2006; specify to notify Lockheed of any discrepancies found during inspection or any evidence of damage or wire replacement, this AD does not require that action.

No Alternative Inspections, Inspection Intervals, or CDCCLs

(j) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

New Information

Explanation of CDCCL Requirements

Note 5: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the FAA-approved maintenance program, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the FAA-approved maintenance program has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Atlanta Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Robert Bosak, Aerospace Engineer, Propulsion Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 474–5583; fax (404) 474–5606.

(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.

Material Incorporated by Reference

(l) You must use Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of this service information on June 25, 2008 (73 FR 29410 May 21, 2008).

(2) For service information identified in this AD, contact Lockheed Continued Airworthiness Project Office, Attention Airworthiness, 86 South Cobb Drive, Marietta, Georgia 30063–0567; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

(3) 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.

(4) 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 October 26, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28301 Filed 12–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–013; Order No. 676–E]

Standards for Business Practices and Communication Protocols for Public Utilities

Issued November 24, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to incorporate by reference in its regulations at 18 CFR 38.2 the latest version (Version 002.1) of certain business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB). NAESB's Version 002.1 Standards include standards adopted by NAESB in response to Order Nos. 890, 890–A, and

890–B. The Version 002.1 Standards we are incorporating by reference in this Final Rule modify NAESB's Commercial Timing Table (WEQ–004 Appendix D) and Transmission Loading Relief Standards (WEQ–008) to provide clarity and align NAESB's business practice standards with the reliability standards adopted by the North American Electric Reliability Corporation, and amend certain ancillary services definitions appearing in the Open Access Same-Time Information Systems Standards (WEQ–001) relating to the inclusion of demand response resources as potential providers of ancillary services. Incorporating these revised standards by reference into the Commission's regulations will provide customers with information that will enable them to obtain transmission service on a non-discriminatory basis and will assist the Commission in supporting needed infrastructure and the reliability of the interstate transmission grid.

DATES: *Effective Date:* This Final Rule will become effective on January 4, 2010. Dates for implementation of the standards are provided in the Final Rule. The Director of the Federal Register has approved the incorporation by reference of the standards addressed in the Final Rule effective January 4, 2010.

FOR FURTHER INFORMATION CONTACT:

Bruce McAllister (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8296.

Valerie Roth (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8538.

Ryan M. Irwin (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6454.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

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1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act (FPA) [1] to incorporate by reference the latest version (Version 002.1) of certain business practice standards adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). These revised standards update an earlier version of the standards that the Commission previously incorporated by reference into its regulations at 18 CFR 38.2 in Order No. 676–C.[2]

2. The new and revised standards that NAESB adopted in the Version 002.1 standards enable public utilities to implement requirements of Order Nos. 890, 890–A, and 890–B.[3] In addition, these standards modify the Commercial Timing Table (WEQ–004 Appendix D) and Transmission Loading Relief Standards (WEQ–008) to provide clarity and align NAESB's business practice standards with the reliability standards adopted by the North American Electric Reliability Corporation (NERC), and amend certain ancillary services definitions appearing in the Open Access Same-Time Information Systems (OASIS) Standards (WEQ–001) relating to the inclusion of demand response resources as potential providers of ancillary services.[4]

I. Background

3. NAESB is a non-profit standards development organization established in January 2002 that serves as an industry forum for the development of business practice standards that promote a seamless marketplace for wholesale and retail natural gas and electricity.[5] Since 1995, NAESB and its predecessor, the Gas Industry Standards Board, have been accredited members of the American National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.[6]

4. NAESB's standards include business practices that streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all four quadrants of the gas and electric industries—wholesale gas, wholesale electric, retail gas, and retail electric. All participants in the gas and electric industries are eligible to join NAESB

[1] 16 U.S.C. 791a, *et seq.*

[2] *Standards for Business Practices and Communication Protocols for Public Utilities,* Order No. 676–C, FERC Stats. & Regs., ¶ 31,274 (2008), *order on clarification and reh'g,* Order No. 676–D, 124 FERC ¶ 61,317 (2008).

[3] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007); *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007); *order on reh'g and clarification,* Order No. 890–B, 123 FERC ¶ 61,299 (2008).

[4] The Version 002.1 Standards also revise the Manual Time Error Correction Standards (WEQ–006) to maintain consistency with revised NERC Standard BAL–004, but we are not incorporating this standard by reference because the Commission's consideration of the revised BAL–004 is still pending. Thus, the earlier version of WEQ–006 will remain in force.

[5] *See Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,612, at P 3 (2007) (Version 2.1 NOPR).

[6] *Id.*

and participate in standards development.[7]

5. NAESB's procedures are designed to ensure that all industry members can have input into the development of a standard, whether or not they are members of NAESB, and each standard NAESB adopts is supported by a consensus of the six industry segments: transmission, generation, marketer/brokers, distribution/load serving entities, end users, and independent grid operators/planners. Under the WEQ process, for a standard to be approved, it must receive a super-majority vote of 67 percent of the members of the WEQ's Executive Committee with support from at least 40 percent of each of the six industry segments.[8] For final approval, 67 percent of the WEQ's general membership must ratify the standards.[9]

6. On September 2, 2008, NAESB reported to the Commission that its WEQ Executive Committee had approved Version 002.0 of its business practice standards.[10] NAESB states that its leadership responded to Order Nos. 890, 890–A, and 890–B, by requesting that its Electronic Scheduling Subcommittee/Information Technology Subcommittee (ESS/ITS) and its Business Practice Subcommittee (BPS) coordinate efforts to address the issues raised by those orders. NAESB states that the ESS/ITS and BPS worked in close coordination with the pertinent NERC committees to draft business practice standards on Order No. 890 issues that complement the NERC reliability standards related to these issues, so that the standards for both organizations would be consistent.[11]

7. On February 19, 2009, NAESB notified the Commission that the WEQ Executive Committee had approved its Version 002.1 standards, which include both new standards and modifications to existing Version 002.0 standards.[12] The Version 002.1 standards include new standards related to capacity benefit margin and rollover rights, and were developed in response to Order Nos. 890, 890–A, and 676–C. Additional modifications included in the Version 002.1 standards include: (1) Modifications to existing standards pertaining to rollover rights; (2) modifications to the Coordinate Interchange Timing Tables contained in Appendix D of the Coordinate Interchange Standards (WEQ–004) to clarify the differences in timing requirements for the Western Electricity Coordinating Council and all other interconnections, complementary to the NERC reliability standards; and (3) modifications to the Transmission Loading Relief—Eastern Interconnection Standards (WEQ–008) to add clarity and ensure that the business practice standards are consistent with NERC reliability standard IRO–006. The Version 002.1 standards supersede and fully replace Version 002.0. To simplify our discussion, unless otherwise stated, we will refer to the new standards collectively as Version 002.1.

8. On March 19, 2009, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to incorporate by reference in its regulations at 18 CFR 38.2 certain[13] NAESB WEQ Version 002.1 Business Practice Standards.[14] In response to this notice, thirteen timely comments, and one late-filed reply comment were filed.[15]

9. On July 7, 2009, and October 9, 2009, NAESB filed reports with the Commission stating that it made minor corrections to Standards WEQ–001, WEQ–003, WEQ–004, and WEQ–008, and corrections to Standard WEQ–008, which consisted of it deleting WEQ–008–1.4 and WEQ–008 Appendix D from Standard WEQ–008. These corrections were ratified by NAESB's members and unanimously adopted by WEQ's Executive Committee.

II. Discussion

A. Overview

10. In this Final Rule, the Commission is amending its regulations under the FPA to incorporate by reference the NAESB WEQ Version 002.1 standards that the Commission proposed to incorporate in the WEQ Version 002.1 NOPR.[16] Most of the changes included in the Version 002.1 standards were made to support the requirements that the Commission established in Order Nos. 890, 890–A, and 890–B, in which the Commission took action to prevent undue discrimination under the *pro forma* open access transmission tariff (OATT).

11. In Order No. 890, the Commission specifically requested that NAESB seek to develop business practice standards governing the terms and conditions of conditional firm service and the posting requirements for available transfer capability, its calculation, and other values. We recognize that NAESB was faced with a difficult task in seeking to develop industry consensus for standards that establish a set of business practice and communication standards to govern an entirely new service (conditional firm service), as well as the other changes envisioned by Order No. 890. For the most part, the industry has

[7] *Id.* P 4.

[8] Under NAESB's procedures, interested persons may attend and participate in NAESB committee meetings, and phone conferences, even if they are not NAESB members.

[9] Version 2.1 NOPR, P 5.

[10] *See* NAESB supplemental report dated Nov. 14, 2008.

[11] The Commission is addressing the associated reliability standards adopted by NERC in a companion final rule being issued in Docket No. RM08–19–000. *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System,* Final Rule, FERC Stats. & Regs. 129 FERC ¶ 61,155 (ATC Final Rule).

[12] On March 12, 2009, NAESB submitted a report to the Commission documenting its ratification of the Version 002.1 standards.

[13] *See infra* n.6.

[14] *Standards for Business Practices and Communication Protocols for Public Utilities,* Notice of Proposed Rulemaking, 74 FR 16160 (Apr. 9, 2009), FERC Stats. & Regs. ¶ 32,640 (Mar. 19, 2009) (WEQ Version 002.1 NOPR).

[15] The Commission will consider all the comments filed in response to the WEQ Version 002.1 NOPR, including Arizona Public Service Company's (APS) late-filed reply comment. The Commission received comments from the following entities: American Wind Energy Association (AWEA); APS; Bonneville Power Administration (Bonneville); Duke Energy Corporation (Duke); Electric Power Supply Association (EPSA); Entergy Services, Inc. (Entergy); ISO/RTO Council (IRC); National Rural Electric Cooperative Association (NRECA) and American Public Power Association (APPA) (collectively, NRECA/APPA); New York Independent System Operator, Inc. (NYISO); North Carolina Electric Membership Corporation (NCEMC); Open Access Technology International, Inc. (OATI); TranServ International, Inc. (TranServ); and Transmission Access Policy Study Group (TAPS).

[16] Consistent with our proposal in the WEQ Version 002.1 NOPR, we are not revising our regulations to incorporate by reference the following standards: Standards of Conduct for Electric Transmission Providers (WEQ–009); Contracts Related Standards (WEQ–010); and WEQ/WGQ eTariff Related Standards (WEQ–014). We are not incorporating WEQ–009 into the Commission's regulations because it contains no substantive standards and merely serves as a placeholder for future standards. We are not incorporating WEQ–010 into the Commission's regulations because this standard contains an optional NAESB contract regarding funds transfers and the Commission does not require utilities to use such contracts. We are not incorporating WEQ–014, eTariff Related Standards, into the Commission's regulations, because the Commission already has adopted standards and protocols for electronic tariff filing based on the NAESB standards. *See Electronic Tariff Filings,* FERC Stats. & Regs. ¶ 31,276 (2008). We are not incorporating NAESB's interpretation of its standards on Gas/Electric Coordination (WEQ–011) into the Commission's regulations because, while interpretations may provide useful guidance, they are not determinative and we will not require utilities to comply with interpretations. Further, as discussed more specifically below, we are incorporating by reference into the Commission's regulations portions of WEQ–001, but are not incorporating the entire standard. Finally, we are not at this time incorporating by reference NAESB's Manual Time Error Correction Standards (WEQ–006) because this standard was developed to maintain consistency with NERC Standard BAL–004, and the Commission's review of BAL–004 is still pending. Thus, the existing version of WEQ–006 will remain in force.

reached a remarkable level of consensus on these standards. We recognize that not every standard enjoys universal support, and that standardization, by its very nature, requires the reconciliation of different interests and needs. The Commission is satisfied that NAESB's process was open and fair. We therefore find that deference to the considered judgment of the consensus of the industry is both reasonable and appropriate. Although we give great weight to the industry consensus, we also have reviewed these standards alongside our Order No. 890 requirements and find that they satisfy these requirements, except in a small number of cases discussed below.

12. In the NAESB WEQ Version 002.1 standards, NAESB has included business practice and technical standards to support conditional firm service, which will provide additional transmission and flexibility to customers. Additionally, NAESB has developed standards that govern the posting requirements for available transfer capability-related information, including narratives explaining changes in available transfer capability and total transfer capability, and explaining underlying load forecast assumptions for available transfer capability calculations and actual peak load. This will improve transparency for customers and allows them to validate available transfer capability calculations.

13. As to the minor corrections that the NAESB Executive Committee filed with the Commission on May 29, 2009 and October 9, 2009, the Commission agrees with NAESB that these corrections are non-substantive errata corrections, and we will incorporate these corrections by reference to ensure the standards we adopt are as accurate and up-to-date as possible.

14. The specific NAESB standards that we are incorporating by reference in this Final Rule are:

- Open Access Same-Time Information Systems (OASIS), Version 1.5 (WEQ–001, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009); [17]
- Open Access Same-Time Information Systems (OASIS) Standards & Communications Protocols, Version 1.5 (WEQ–002, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.5 (WEQ–003, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Coordinate Interchange (WEQ–004, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Inadvertent Interchange Payback (WEQ–007, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Transmission Loading Relief—Eastern Interconnection (WEQ–008, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Gas/Electric Coordination (WEQ–011, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Public Key Infrastructure (PKI) (WEQ–012, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009); and
- Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.5 (WEQ–013, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009).

15. The NAESB WEQ approved the Version 002.1 Standards under NAESB's consensus procedures.[18] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.[19]

16. The Commission will require public utilities to modify their open access transmission tariffs (OATTs) to include the standards that we are incorporating by reference in this Final Rule. In the past, to reduce the filing burden, we allowed public utilities to postpone making a separate tariff filing making this tariff modification and allowed them to include this revision as part of an unrelated subsequent tariff filing.[20] In this case, however, as compliance with the standards will not be required for more than a year from the issuance of this rule, we will require the tariff filing to be made at least 90 days before the compliance date (*i.e.,* on or before the first day of the first quarter occurring 365 days after approval of the NERC Reliability Standards being addressed in Docket No. RM08–19–000 by all applicable regulatory authorities). Public utilities may still, at their option, combine this tariff filing with an unrelated separate tariff filing, so long as the tariff filing is made at least 90 days before the compliance date. As we did in Order No. 676,[21] we clarify that, to the extent a public utility's OASIS obligations are administered by an independent system operator (ISO) or regional transmission operator (RTO) and are not covered in the public utility's OATT, the public utility will not need to modify its OATT to include the OASIS standards.

17. The following sections address the issues raised by the commenters.[22]

[17] With the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0, 001–9.7, 001–14.1.3, and 001–15.1.2. The Version 1.5 OASIS standards (WEQ–001, WEQ–002, WEQ–003, and WEQ–013) are included in the NAESB WEQ Version 002.1 Standards. While they are now developed by NAESB, the OASIS standards were initially developed by an industry working group, and are therefore designated as both Version 1.5 and Version 002.1. Version 1.5 references an update to the designation applied by the original working group, and Version 002.1 references their inclusion in the NAESB WEQ Version 002.1 Standards.

[18] This process first requires a super-majority vote of 17 out of 25 members of the WEQ's Executive Committee with support from at least 40 percent of each of the five industry segments. For final approval, 67 percent of the WEQ's general membership voting must ratify the standards.

[19] Public Law 104–113, section 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[20] *See* Order No. 676, FERC Stats. & Regs. ¶ 31,216, P 100 (2006). As discussed further below, in order to align the implementation date for the NAESB WEQ Version 002.1 standards with that of the related NERC reliability standards being addressed in the proceeding in Docket No. RM08–19–000, we are not requiring compliance with the standards we are incorporating by reference in this Final Rule until the first day of the first quarter occurring 365 days after approval of the referenced Reliability Standards by all applicable regulatory authorities. In making its required tariff filing, each filing utility is to use the language specified later in this order, *see infra* P 129.

[21] *Standards for Business Practices and Communication Protocols for Public Utilities,* Final Rule, Order No. 676, FERC Stats. & Regs. ¶ 31,216, P 20 (2006).

[22] In the discussion below, we will discuss the issues raised by commenters. We are incorporating by reference without further discussion those standards that were not the subject of any adverse comments.

B. Issues Raised by Commenters

1. Available Transfer Capability-Related Standards

18. In Order No. 890, we directed public utilities, working through NERC reliability standards and NAESB business practices development processes, to produce workable solutions to complex and contentious issues surrounding improving the consistency and transparency of available transfer capability calculations.[23] As described in the NOPR, NAESB developed several standards related to available transfer capability in response to Order No. 890. First, NAESB modified WEQ–001 to support the transparency reporting and related functions required by Order No. 890. Second, in response to the available transfer capability related posting requirements established by the Commission in Order No. 890, NAESB has developed business practice standards in WEQ–001 (including Standards 001–14, 001–15, 001–17, 001–18, 001–19, 001–20 and Appendix D), WEQ–002, WEQ–003 and WEQ–013 (including Appendices A and B).[24] We address below the comments filed with respect to these standards.

a. Standard 001–13.1.5 (ATC Information Link)

19. NAESB developed Standard 001–13.1.5, which provides for an ATC Information Link on OASIS, in close coordination with the NERC available transfer capability drafting team. Standard 001–13.1.5 replaces NERC MOD–003, which NERC and NAESB determined were better classified as business practice standards than reliability standards.

20. In the WEQ Version 002.1 NOPR, the Commission proposed to incorporate by reference Standard 001–13.1.5, which provides for an ATC Information Link on OASIS and requires Transmission Providers to post links to their Available Transfer Capability Implementation Document, Capacity Benefit Margin Implementation Document, and Transmission Reserve Margin Implementation Document (as specified in NERC reliability standards MOD–001–1, MOD–004–1, and MOD–008–1, respectively). Under NERC Standard MOD–001–1 R3.2, the Available Transfer Capability Implementation Document must include a ''description of the manner in which the Transmission Service Provider will account for counterflows.''

21. In addition, the Commission made clear in the WEQ Version 002.1 NOPR that it expected that the provision in Standard 001–13.1.5 affording Transmission Providers the ability to redact sensitive information would be implemented by Transmission Providers subject to the OATT in a manner consistent with the Transmission Provider's obligation to make that information available to those with a legitimate need to access the information, subject to appropriate confidentiality restrictions.

i. Comments

22. Several commenters[25] request that the implementation date for posting the Available Transfer Capability Information Link required by Standard 001–13.1.5 coincide with the effective implementation date for implementing the NERC reliability standards relating to available transfer capability currently before the Commission, as the documents to which links must be provided under Standard 001–13.1.5 are described in these NERC standards.

23. TAPS[26] supports the Commission's interpretation of the proposed business practices, particularly Standard 001–13.1.5.[27] TAPS states that it is essential for customers to have timely access to available transfer capability- and service request-related information. This will allow customers to verify the amount of transmission that appears to be available for purchase, thereby enhancing the Commission's goals of transparency, reliability, and competition.

24. EPSA is critical of Standard 001–13.1.5. EPSA comments that the standard affords transmission providers the ability to redact certain information due to market, security or reliability sensitivity concerns, but provides no definition or guidance as to what constitutes such concerns, thereby allowing transmission providers the flexibility to post whatever information they so choose.[28] EPSA requests that the Commission make explicit that nothing in these standards limits customers' ability to specifically request available transfer capability-related information subject to appropriate confidentiality protections and Critical Energy Infrastructure Information (CEII) requirements, as specified in Order No. 890–A.[29]

25. EPSA also argues that Standard 001–13.1.5 results in a ''fill-in-the-blank'' standard governing the treatment of counterflows. EPSA claims that the standard will result in different calculation methodologies by different transmission providers. Because Standard 001–13.1.5 permits transmission providers to redact information due to market, security, or reliability sensitivity concerns, EPSA also contends that transmission providers will have unfettered discretion with respect to their obligations to post the methodology that they use to account for counterflows.[30]

26. APS requests that the Commission clarify that the Implementation Documents and Postback Methodology in the NAESB and NERC standards fulfill the requirements and detail specified in Order No. 890 for Attachment C. If the Commission does not believe that the Implementation Documents and Postback Methodology from the NERC and NAESB standards meet the requirements of Order No. 890 for the purpose of Attachment C, APS requests that the Commission clarify the difference between the Order No. 890 requirements and the documentation requirements found in the NERC and NAESB standards.

27. Additionally, APS asks for clarification that the statement in Order No. 890 that a ''revised Attachment C to [the] Open Access Transmission Tariff (OATT) be made within 60 days of completion of the NERC and NAESB process'' means that a revised Attachment C to the OATT must be filed within 60 days of the later effective date of the NERC standards or NAESB standards.[31]

ii. Commission Determination

28. NAESB's Standard 001–13.1.5 represents a consensus approach agreeable to all six segments of the industry, and is not inconsistent with Commission policies. Therefore, we will incorporate the standard by reference as proposed in the WEQ Version 002.1 NOPR.

29. In response to EPSA's concerns relating to the redaction of information under Standard 001–13.1.5, we reiterate the statement we made in the WEQ Version 002.1 NOPR that we expect the provision for a transmission provider to redact sensitive information from postings to be implemented by a transmission provider subject to the OATT in a manner consistent with its obligation to make that information available to those with a legitimate need to access the information, subject to appropriate confidentiality

[23] Order No. 890, P 196.

[24] Id. P 369 and 371.

[25] APS at 2–3, Duke at 4, and Entergy at 6–7.

[26] TAPS is an association of transmission-dependent utilities in more than 30 states.

[27] TAPS at 3–4.

[28] EPSA at 16.

[29] Order No. 890–A, P 148.

[30] EPSA at 17.

[31] APS at 3.

restrictions.[32] We also clarify that these standards do not limit transmission customers' ability to request nor relieve transmission providers of their obligation to provide, subject to appropriate confidentiality protections and CEII requirements, data relating to the calculation of available transfer capability, as required by the Commission in Order Nos. 890 and 890–A.[33] With these clarifications, we will incorporate Standard 001–13.1.5 into our regulations as we proposed in the WEQ Version 002.1 NOPR.

30. As to EPSA's argument that Standard 001–13.1.5 allows transmission providers unfettered discretion with respect to their obligations to post the methodology that they use to account for counterflows, we again emphasize that we expect transmission providers subject to the OATT to implement this standard in a manner consistent with their obligation to make any redacted information available to those with a legitimate need to access it, subject to appropriate confidentiality restrictions. Moreover, Order No. 890 did not prescribe the exact methodology to account for counterflows, nor did it find that there could only be a single acceptable methodology for determining this available transfer capability component. The NAESB standards address the posting requirements for the document. Responsibility for developing the methodology to account for counterflows rests with NERC, and not NAESB.[34]

31. APS requests clarification that the Implementation Documents and Postback Methodology required to be posted on OASIS by Standard 001–13.1.5 fulfill the requirements and detail specified in Order No. 890 for Attachment C. The information that the Commission requires transmission providers to include in their Attachment C and the information that transmission providers are required to include in their Implementation Documents under NERC reliability standards MOD–001–1, MOD–004–1, and MOD–008–1 and Postback Methodology under NAESB Standard 001–18 (Postback Requirements) are not identical.

32. For example, some of the required components of an Attachment C include a detailed description of the specific mathematical algorithm used to calculate firm and non-firm available transfer capability/available flowgate capacity for the transmission provider's scheduling horizon, operating horizon, and planning horizon; a process flow diagram that illustrates the various steps through which available transfer capability/available flowgate capacity is calculated; and a detailed explanation of how each of the available transfer capability components (including total transfer capability, existing transmission commitments, capacity benefit margin, and transmission reserve margin) is calculated for both the operating and planning horizons. In contrast, some of the requirements of the Implementation Documents include a description of how the available transfer capability/available flowgate capacity calculation methodology is implemented; a description of how the transmission provider will account for counterflows; the other transmission providers and/or transmission operators from which a given transmission provider receives data or to which it supplies data; the procedure and assumptions that a transmission provider uses to establish capacity benefit margin; the process through which a load-serving entity can request to set aside or use capacity benefit margin; and the components used to calculate transmission reserve margin. Thus, we clarify here that the Implementation Documents and Postback Methodology are not sufficient to satisfy the requirements and detail specified in Order No. 890 for Attachment C, as the information that they require to be posted is not the same as the information that Commission requires to be included in Attachment C.

33. Moreover, the Commission has determined that it is necessary for the information presented in Attachment C to be included in the tariff, not simply to be posted on OASIS as is required of the information included in the Implementation Documents and Postback Methodology by the Standard 001–13.1.5. In Order No. 890, the Commission rejected proposals to address the transparency of available transfer capability methodology by merely referencing business practices and reliability standards. Specifically, the Commission found that because available transfer capability calculations have a direct and tangible effect on the granting of open access transmission service, ''an accurate and detailed statement of the methodology and its components that defines how the transmission provider determines available transfer capability belongs in the transmission provider's OATT as the means of holding the transmission provider accountable for following non-discriminatory procedures for granting service, not in the business practices kept by the transmission provider.'' [35] Thus, we likewise clarify here that the Implementation Documents and Postback Methodology that must be posted on OASIS under Standard 001–13.1.5 are separate and distinct from the requirements and detail specified in Order No. 890 for Attachment C, which must be included in the transmission provider's OATT.[36]

34. Lastly, we clarify that the NAESB Version 002.1 standards and the related NERC reliability standards will have the same implementation date.[37] In addition, the revised Attachment C to the OATT should be filed early enough so that it is approved and in place by the time the NERC reliability standards become enforceable. This being the case, we are directing public utilities to file a revised Attachment C to the OATT on or before 275 days after approval of the NERC Reliability Standards being addressed in Docket No. RM08–19–000 by all applicable regulatory authorities. This will leave 90 days for review and approval of these filings before the NERC reliability standards become enforceable.

b. Standards 001–14 and 001–15 (Available Transfer Capability Narratives)

35. In the WEQ Version 002.1 NOPR, the Commission proposed to incorporate by reference Standard 001–14, which was developed by NAESB to meet the requirement in Order No. 890 for transmission providers to post a narrative in instances when available transfer capability remains unchanged at a value of zero for six months or longer. In addition, the Commission also proposed to incorporate by reference Standard 001–15, which requires transmission providers to post a brief narrative that explains the reason for a change in monthly or yearly available transfer capability values on a constrained path when a monthly or yearly available transfer capability value changes as a result of a 10 percent change in total transfer capability.

i. Comments

36. Entergy requests that the Commission clarify that, where a transmission provider is not required to convert available flowgate capability

[32] *See* Order No. 890, P 403–04 (requiring the development of standard disclosure for timely disclosure of CEII information to those with a legitimate need for it).

[33] *See* Order No. 890, P 348 and Order No. 890–A, P 148.

[34] *See* MOD–008–1.

[35] Order No. 890, P 325.

[36] We also note that in the companion rulemaking in Docket No. RM08–19–000 the Commission found that the requirement to provide this information is not overly burdensome. *See* ATC Final Rule at P 147.

[37] *See supra* P 16 & n.20.

values to available transfer capability values for posting, the values to be used to fulfill the posting requirements set forth in Standard 001–14 and 001–15 are the values calculated and posted by the transmission provider, *i.e.,* in Entergy's circumstance, available flowgate capability values. Entergy submits that this interpretation is supported not only by the Commission's statement in Order No. 890–B, but also by the NERC reliability standards, the inclusion of ''Other'' as reasons for zero available transfer capability in Standard 001–14, and the specific inclusion of total flowgate capacity as an underlying assumption in Standard 001–15.[38]

37. EPSA contends that Standard 001–15, while consistent with the requirements of Order No. 890, does not reflect the underlying goals of the Commission in Order No. 890.[39] EPSA argues that the standard allows transmission providers five business days to post a narrative, provides no linkage between the duration of the contingency that has caused the reduction in total transfer capability and the resulting changes in available transfer capability/available flowgate capability, and does not require a narrative posting by a transmission provider when an outage on an adjacent system affects the original transmission provider's available transfer capability. EPSA states that these current requirements are insufficient to promote market transparency.

ii. Commission Determination

38. In this Final Rule, we will incorporate by reference Standards 001–14 and 001–15, with the exception of Standards 001–14.1.3 and 001–15.1.2. As explained further below, we decline to incorporate Standards 001–14.1.3 and 001–15.1.2 by reference, as they permit transmission providers to post an available transfer capability change narrative within five business days of meeting the criteria under which a narrative is required to be posted, which is inconsistent with the Commission's rejection in Order No. 890 of delays in posting data.[40]

39. In regards to Entergy's question of whether the transmission provider's calculated and posted available flowgate capability values should be used to fulfill the posting requirements set forth in Standard 001–14 and 001–15 in instances where there is no requirement to convert this calculation to available transfer capability values, we agree with Entergy that this requirement can be met by the transmission provider posting its available flowgate capability values. As to EPSA's argument that Standard 001–15 falls short of the goals of Order No. 890, we find that, with the exception of Standard 001–15.1.2, compliance with Standard 001–15 provides all of the information required by Order No. 890. However, Standards 001–14.1.3 and 001–15.1.2 permit transmission providers to post an available transfer capability change narrative within five business days of meeting the criteria under which a narrative is required to be posted. In Order No. 890, the Commission rejected calls for delays prior to posting data and required posting as soon as possible.[41] We do not find the NAESB standard meets this criterion and therefore decline to incorporate Standards 001–14.1.3 and 001–15.1.2 by reference. Transmission providers must post their narratives as soon as feasibly possible. Posting within one day would appear in most cases to be reasonable.

c. Standard 001–16.1 (Available Transfer Capability or Available Flowgate Capability Methodology Questions)

40. In the WEQ Version 002.1 NOPR, we proposed to incorporate by reference Standard 001–16.1, which requires transmission providers to respond to questions about the methodology for calculating available transfer capability and available flowgate capability. In the NOPR, we interpreted this standard as requiring the transmission provider to provide data when necessary to respond to the methodology questions in order to be consistent with the requirement in Order No. 890 that transmission providers must, upon request, ''make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers.''[42]

i. Comments

41. TAPS supports the Commission's interpretation of the proposed business practices for the disclosure of available transfer capability and transmission service related data. It also supports the Commission's pro-transparency interpretation of NAESB Standard 001–16.1 which requires transmission providers to provide data used to calculate available transfer capability and total transfer capability for any constrained path upon request. TAPS states that timely access to available transfer capability and service request information and a transparent and accurate available transfer capability calculation process will encourage competition.

ii. Commission Determination

42. Standard 001–16.1 represents a consensus approach agreeable to all six segments of the industry, and, as we interpret the standard, is not inconsistent with Commission policies. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–16.1 by reference into our regulations. We reiterate our interpretation of this standard, as described in the WEQ Version 002.1 NOPR. We expect that transmission providers will implement this standard in a manner consistent with the requirement in Order No. 890 that transmission providers must, upon request, ''make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers''[43] by providing data when necessary to respond to methodology questions.

d. Actual and Forecasted Load Posting

43. Standard 001–17 is one of the standards that NAESB developed in response to Order No. 890 and addresses the obligations of transmission providers and ISOs and RTOs to post information concerning their actual and forecasted peak load.[44] Specifically, Standard 001–17.2.1 and Standard 001–17.4.1 require transmission providers and ISOs and RTOs respectively to post a single maximum hourly megawatt (MW) value for peak load. Standard 001–17.6.5 requires transmission providers and ISOs and RTOs to post on the available transfer capability Information Link a descriptive statement of the current underlying load forecast assumptions, which must include all weather variables used (*e.g.,* temperature, humidity, wind speed, number of measuring points).

i. Comments

44. Several of EPSA's comments relate to the actual and forecasted load posting requirements described in Standard 001–17. EPSA contends that Standard 001–17.2.1, Standard 001–17.4.1, and

[38] Entergy at 7–8.

[39] EPSA at 13.

[40] Order No. 890, P 370.

[41] *Id.* P 370, where the Commission rejected calls for delays prior to posting data, finding that commenters supporting delay had ''proffered no evidence to support the allegation of potential harm.''

[42] *Id.* P 348.

[43] Order No. 890, P 348.

[44] *Id.* P 413.

Standard 001–17.6.5 limit transparency in that they require the posting of only a single number for peak loads, even where a transmission provider's internal processes produce multiple (in many cases hourly) peak forecasts.[45] In addition, EPSA is concerned that transmission providers may post the information required by Standard 001–17.2.1 at a time subject to their discretion.[46] With regard to Standard 001–17.6.5, EPSA questions whether a document that includes the weather variables used to forecast load without providing the assumed values for each weather variable in a particular forecast adds any useful information, and therefore any enhanced transparency, to the load forecasting process.[47]

ii. Commission Determination

45. Standard 001–17 represents a consensus approach agreeable to all six segments of the industry. Contrary to EPSA's representations, we find that this standard satisfies the requirement in Order No. 890 to post load forecasts and actual daily peak load.[48]

46. In Order No. 890, the Commission required transmission providers to post their load forecasts and actual daily peak load for both system-wide load (including native load) and native load,[49] not the data concerning multiple peaks requested by EPSA. In Order No. 890–B, the Commission clarified that it did not intend for transmission providers to post all economic and other data that underlies each and every daily load forecast, but rather the underlying factors used to make load forecasts that have a significant impact on calculations, such as temperature forecasts.[50]

47. Therefore, we will incorporate Standard 001–17 by reference into our regulations.

e. Grandfathered Agreements

48. In response to Order No. 890,[51] NAESB has developed posting requirements for some of the components included in the amount of transfer capability that a transmission provider can set aside for its native load and other committed uses. As part of this package, Standard 001–19, establishes a mechanism for posting the grandfathered agreements component of existing transmission commitments associated with the available transfer capability value posted on OASIS. Under Standard 001–19.1, transmission providers using available transfer capability calculation methodologies other than the Flowgate Methodology must post the aggregate MW value for the grandfathered agreements. Such data must be posted so that it can be viewed and queried using the system data template. Standard 1–19.1.2 does not require transmission providers using the Flowgate Methodology to post an aggregate MW value that can be viewed and queried using the system data template. Instead, it requires that the transmission provider must post a list of Grandfathered Agreements with MW values that are expected to be scheduled or expected to flow.

i. Comments

49. TranServ recommends that all transmission providers should be required to post a list of the grandfathered agreements that are factored into their available transfer capability methodology, as is required of transmission providers using the Flowgate Methodology under Standard 001–19.1.2. TranServ argues that the requirement to post a single aggregate MW value representing the impact of all grandfathered agreements on available transfer capability has little additional value, and that those transmission providers using Flowgate Methodology may have difficulties identifying the specific impacts of grandfathered agreements from the aggregate impacts of network and native load service on their transmission system.

50. EPSA contends that the requirement to post a single aggregate MW value for all grandfathered agreements provides insufficient transparency, particularly as grandfathered agreements represent allocations of transmission capacity that pre-date the open access environment and may include non-standard provisions. Thus, transmission providers may need to make accommodations to incorporate these commitments into the current structure of OASIS reservations and available transfer capability calculations. To promote transparency, EPSA argues that the standard should require information concerning the duration, MW capacity and the associated point of receipt/point of delivery and source/sink combinations, the resulting allocation of the contract provisions to specific transmission interfaces, and the resulting calculation of the available transfer capability/available flowgate capability associated with each contract.[52]

ii. Commission Determination

51. One of the Commission's objectives in Order No. 890 was to reduce the potential for transmission providers to unduly discriminate when they provide transmission service by limiting their discretion to calculate available transfer capability using unknown assumptions and methodologies.[53] For this reason, the Commission found that ''all [Available Transfer Capability] components (*i.e.,* [total transfer capability], [existing transmission commitments], [capacity benefit margin], and [transmission reliability margin]) and certain data inputs, data exchange, and assumptions be consistent and that the number of industry-wide ATC calculation formulas be few in number, transparent and produce equivalent results.'' [54] In Order No. 890, the Commission required that grandfathered transmission rights be included as committed uses of the transmission system under the definition of Existing Transmission Commitments.[55]

52. As we pointed out in the NOPR, the NAESB standards adopt two different methods of posting grandfathered agreements, depending on whether the flowgate methodology is used. Because of the nature of the flowgate methodology, the standards exempt it from the requirement to post an aggregate MW value that can be viewed and queried using the system data template. Instead, the standards require the transmission provider to post a list of grandfathered agreements with MW values that are expected to be scheduled or expected to flow. Transmission providers using available transfer capability calculation methodologies other than the flowgate methodology are required to make this data accessible through the system data template.

53. EPSA and TranServ argue that the complete data on grandfathered agreements needs to be provided even for those systems that do not utilize the flowgate methodology. Order No. 890 does not require the posting of complete data for grandfathered agreements. It required only that grandfathered agreements be included in the Existing

[45] EPSA at 9 and 14.

[46] *Id.* at 18.

[47] *Id.* at 9.

[48] *See* Order No. 890, P 416, Order No. 890–A, P 143, and Order No. 890–B, P 34–35.

[49] Order No. 890, P 416.

[50] Order No. 890–B, P 35.

[51] Order No. 890, P 244.

[52] EPSA at 9–11.

[53] The Commission reasoned that the potential for discrimination is not primarily in the choice of an available transfer capability calculation methodology, but rather in the inconsistent application of its components. Order No. 890, P 208.

[54] *Id.* P 207.

[55] *Id.* P 244.

Transmission Commitments component of available transfer capability. All six segments of the industry concluded that for transmission providers not using the flowgate methodology, inclusion of the aggregate information in the calculations is sufficient, and we find reasonable the distinctions they have drawn and their determination that inclusion of grandfathered agreements in the system data template provides sufficient transparency. Moreover, as we discuss below, transmission providers must, upon request, provide the basis upon which they calculate available transfer capability should such information be requested in a particular circumstance.[56]

f. Availability of Data Used in Available Transfer Capability Calculations

54. Standard 001–16.1 requires Transmission Providers to respond to questions about the methodology for calculating available transfer capability and available flowgate capability. In the WEQ Version 002.1 NOPR, we stated that we interpreted this standard as requiring the Transmission Provider to provide data when necessary to respond to the methodology questions in order to be consistent with the requirement in Order No. 890 that transmission providers must, upon request, ''make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers.'' [57]

i. Comments

55. EPSA is concerned that there is a lack of transparency for the data items used in available transfer capability calculations, and contends that this issue was not adequately addressed through the NAESB process. Specifically, EPSA urges the Commission to require not only that data be made available, but that all underlying data supporting available transfer capability calculations be required to be posted.

ii. Commission Determination

56. Standard 001–16.1 represents a consensus approach agreeable to all six segments of the industry, and satisfies the requirement in Order No. 890 to make data used in available transfer capability calculations available. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–16.1 by reference into our regulations. As described above, we interpret Standard 001–16.1 as requiring the Transmission Provider to provide data when necessary to respond to the methodology questions in order to be consistent with the requirement in Order No. 890 that transmission providers must, upon request, ''make available all data used to calculate [available transfer capability] and [total transfer capability] for any constrained paths and any system planning studies or specific network impact studies performed for customers.'' [58] Since such data will be available on request, we see no need to impose a more onerous ongoing posting requirement as requested by EPSA.

2. Conditional Firm Service Standards

57. In the OASIS Standards, NAESB has included a number of standards that support conditional firm service as envisioned by the Commission in Order Nos. 890 and 890–A. NAESB has developed business practice standards to facilitate the implementation of conditional firm service, relying on the Commission's description of the attributes of that service in Order No. 890.[59] Specifically, NAESB developed Standards 001–21 through 001–21.5.5 on the Conditional Curtailment Option, the term that NAESB uses to describe conditional firm service. These standards address: (1) The limitations and conditions under which the Conditional Curtailment Option is offered; (2) the posting requirements for information concerning a Conditional Curtailment Option reservation and its curtailment criteria; (3) the process for performing the biennial reassessment; (4) the curtailment of a Conditional Curtailment Option reservation; and (5) the redirect, transfer, and resale of a Conditional Curtailment Option reservation.

58. Additionally, NAESB has developed other standards related to conditional firm service in response to the Commission's requests for the development of specific standards in Order Nos. 890 and 890–A.[60] Specifically, NAESB has developed Standard 001–21.1.6, which requires that transmission providers offer short-term firm service to conditional firm customers as capacity (that would alleviate the constraints associated with a Conditional Curtailment Option reservation) becomes available. In response to Order No. 890–A, NAESB has created and modified standards in WEQ–001, Appendix C to WEQ–001, WEQ–002, WEQ–003, WEQ–008 and WEQ–013, to provide a consistent set of tracking capabilities and business practices for tagging, as a means to implement conditional firm service.

59. The following addresses the comments received on these proposals.

a. Resales of Transmission Service

60. Standard 001–11.3.2 governs the conditions under which multiple transmission service reservations may be aggregated to support a resale of transmission service. Under Standard 001–11.3.2, transmission service reservations subject to the terms of a Conditional Curtailment Option [61] may not be aggregated to support a resale of transmission service.

i. Comments

61. In their comments, both AWEA and EPSA argue that there is no basis for treating resales of conditional firm service differently from resales of other long-term firm service.[62] Therefore, AWEA and EPSA request that the Commission direct NAESB to remove the restriction on aggregating reservations subject to the Conditional Curtailment Option to support a resale.

ii. Commission Determination

62. We will incorporate by reference into our regulations NAESB's revisions to Standard 001–11.3.2. NAESB's standard does not preclude the resale of conditional firm service. Such service can be resold as separate transactions. Unlike other types of long-term firm service, the conditions imposed in a conditional firm reservation are specific to the reservation, identified in the system impact study, and documented in the service agreement. The service agreement is a customer-specific, non-conforming agreement that must be filed with the Commission for review and approval. Because the contract terms for conditional firm service are likely to be different, we find reasonable NAESB's determination not to create standards for the aggregation of such transactions.

b. Standard 001–21.1.6

63. NAESB has developed Standard 001–21.1.6 in response to Order No. 890, in which the Commission directed transmission providers to work through NAESB to develop appropriate communication protocols to assign short-term firm service to conditional firm customers as the service becomes

[56] WEQ Standard 001–16.1. *See also* WEQ Standard 001–13.1.5.

[57] WEQ Version 002.1 NOPR, P 21.

[58] Order No. 890, P 348.

[59] *Id.* P 1043–47.

[60] *Id.* P 1078; Order No. 890–A, P 592.

[61] ''Conditional Curtailment Option'' is the term that NAESB uses to describe conditional firm service.

[62] AWEA at 5–6, EPSA at 20.

available.[63] Standard 001–21.1.6 requires that transmission providers offer any available short-term firm capability that would alleviate the constraint(s) associated with a conditional firm reservation to the conditional firm customer prior to offering such capability to other customers.

i. Comments

64. In its comments, AWEA is concerned about the ability to interpret this standard in various ways, and suggests modifications to the standard to ensure that short-term firm capability is not double counted.[64] Both EPSA and AWEA contend that firm available transfer capability should be decremented when a conditional firm reservation is provided with short-term firm transfer capability before any additional short-term firm capability is offered to other transmission customers.[65] EPSA requests that the Commission indicate to NAESB that Standard 001–21.1.6 should be modified to reflect their proposal.

65. AWEA is also apprehensive that the proposed NAESB standard does not address an important aspect of the Conditional Curtailment Option: How new long-term available transfer capability will be allocated to Conditional Curtailment Option customers when it becomes available.[66] AWEA points out that there may be instances when long-term capacity becomes available after a customer signs a conditional firm contract. Since Order No. 890 states that conditional firm will be charged at the same rate as long-term service, AWEA states that conditional firm customers should have rights to long-term firm available transfer capability when it becomes available. Accordingly, AWEA urges the Commission to require clarification of the methodology for allocating such available transfer capability in the conditional firm service standard, as it believes this practice should not be left up to the transmission provider's discretion and should instead be consistent across the industry.

ii. Commission Determination

66. Standard 001–21.1.6 is consistent with the Commission's directive in Order No. 890[67] that transmission providers assign short-term firm service to conditional firm customers as the service becomes available and represents a consensus approach agreeable to all six segments of the industry. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–21.1.6 by reference into our regulations.

67. Both EPSA and AWEA are concerned that available transfer capability will not be properly decremented to reflect the assignment of short-term firm service to conditional firm customers. AWEA suggests that the standard should be modified to ensure that double-counting does not occur.[68]

68. As to the concerns raised over how new long-term available transfer capability will be allocated to conditional firm customers when it becomes available, as AWEA recognizes, in Order No. 890, the Commission established that conditional firm customers have priority relative to short term firm capability, and did not provide such priority with respect to long term firm capability. AWEA did not raise this issue in the Order No. 890 proceeding, and if it seeks a change to the priority order established in the rule, it should do so through an appropriate filing with the Commission. Since NAESB's standard complies with the requirement of Order No. 890, we are adopting it here.

c. Biennial Reassessment

69. NAESB developed Standards 001–21 through 001–21.5.5 to facilitate the implementation of conditional firm service, relying on the Commission's description of the attributes of that service in Order No. 890. In its discussion of conditional firm service, the Commission specified that transmission providers shall have the right to perform a biennial[69] reassessment of their ability to continue to reliably provide conditional firm service for those transmission customers taking conditional firm service who are unwilling to commit to a facilities study or the payment of network upgrade costs. When conducting a biennial reassessment, the transmission provider reassesses the conditions under which conditional firm service may be curtailed for those conditional firm service reservations subject to the system-conditions criteria or the maximum number of hours that service can be curtailed for those reservations subject to the number-of-hours criteria. The Commission also determined that a transmission provider is permitted to waive or extend its right to reassess the availability of conditional firm service,[70] so that transmission providers may offer conditional firm service for a period of longer than two years without reassessment.

i. Comments

70. Bonneville raises objections to the incorporation by reference of Standard 001–21.3.1.2, which allows a transmission provider to waive its right to perform a biennial reassessment. Bonneville states that Standard 001–21.3.1.2 is inconsistent with the Commission's policy. Bonneville argues that the standard should allow a Transmission Provider the right to extend its reassessment of the conditions for conditional firm service. Bonneville proposes to modify the NAESB standard so that it permits transmission providers to extend their right to perform the biennial reassessment as well as to waive such right.

ii. Commission Determination

71. Nothing in Standard 001–21.3.1.2 prevents a Transmission Provider from extending its right to reassess the availability of conditional firm service. The standard states that a transmission provider is permitted to waive its right to conduct a biennial reassessment, not that a transmission provider is prohibited from extending the assessment period. Thus, we do not find the requirements of this standard inconsistent with the requirement in Order No. 890 that a transmission provider may extend its right to reassess the availability of conditional firm service and, as proposed in the WEQ Version 002.1 NOPR, will incorporate Standard 001–21.3.1.2 by reference into our regulations.

72. However, we reiterate here the Commission's finding in Order No. 890 that a transmission provider is permitted to extend its right to reassess the availability of conditional firm service.[71] Since the Version 002.1 Standards do not specifically address this issue, we would ask the industry, working through NAESB, to continue to look at additional business practice standards facilitating a transmission provider's extension of its right to perform a reassessment.

d. Posting System Conditions

73. As part of the overall Version 002.1 Standards, the Commission proposed to incorporate by reference

[63] Order No. 890, P 1078.

[64] AWEA at 6–7.

[65] EPSA at 21.

[66] AWEA at 7.

[67] Order No. 890, P 1078.

[68] The issue of double-counting data inputs to available transfer capability calculations affects the reliability of the Bulk Power System, and is addressed in the companion ATC Final Rule at P 183. *See* n.11 *supra.*

[69] Biennial is every two years, in contrast to biannual, which is twice a year.

[70] Order No. 890, P 985.

[71] *Id.*

Standard 001–21.4.2.1, which is part of a set of standards detailing the business practices for managing and curtailing transmission service with a conditional curtailment option. Standard 001–21.4.2.1 requires transmission providers to post on OASIS the reduction in each impacted conditional firm reservation prior to or coincident with any curtailments of conditional firm service at the conditional curtailment priority level. The conditional curtailment priority level is equal to that of secondary network transmission service, and is applied when conditional firm service is not firm in accordance with the terms of the transmission service agreement. For a conditional firm service reservation subject to the system conditions criteria, the conditional curtailment priority level is applied to a conditional firm service reservation under system conditions specified in the transmission service agreement. For a conditional firm service reservation subject to the number of hours criteria, it is applied due to reliability concerns when the maximum number of hours that service can be curtailed under the transmission service agreement has not yet been reached.

i. Comments

74. Entergy seeks Commission clarification on whether this standard requires the posting of any curtailment of conditional firm service actually be made ''prior to or coincident with'' the implementation of the curtailment, in light of the difficulty of making such postings while managing the reliability of the transmission system in a congested situation. Entergy urges the Commission to clarify that the same posting requirements currently in the regulations at 18 CFR 37.6(e)(3) are appropriate for posting curtailments of conditional firm service.[72]

75. Both AWEA and EPSA contend that the standards governing the provision of conditional firm service lack adequate transparency due to a deficiency of posting requirements regarding system conditions. Under a conditional curtailment option subject to the systems-condition criteria, conditional firm service can be curtailed based on pre-identified system conditions. To inform their business decisions and to evaluate the firmness of their reservation at any given time, AWEA and EPSA argue that transmission customers taking conditional firm service require the maximum amount of information practical as to the risk that their service will be curtailed. Therefore, AWEA and EPSA claim that transmission providers should be required to post information pertaining to the system conditions in effect at any given time, even if the event of a single condition alone will not reduce the priority of the service to non-firm.[73]

ii. Commission Determination

76. Standard 001–21.4.2.1 represents a consensus approach agreeable to all six segments of the industry, and is not inconsistent with Commission policies. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–21.4.2.1 by reference into our regulations. As to Entergy's contention that Standard 001–21.4.2.1 should allow postings consistent with 18 CFR 37.6(e)(3), we note that 18 CFR 37.6(e)(3) does not include any specific time requirements for the posting. We believe that the timing of when information must be posted is an important element in providing for transparency and accountability surrounding the provision of conditional firm service. Revising the standards to remove any requirement as to when information must be posted would severely diminish the achievement of both of those goals. Thus, we will require the posting to be made ''prior to or coincident with'' as provided in the standard.

77. As to the concern raised by AWEA and EPSA about the lack of transparency regarding the conditions leading to curtailments, these commenters failed to persuade a majority of NAESB members to adopt their requests to impose posting obligations that exceed the requirements of Order No. 890. The requested postings would appear to impose a continuous burden on transmission providers which, in light of the non-curtailment status of the system for most of the time intervals, does not appear to be warranted. Given that the current NAESB standard satisfies the Order No. 890 requirements, we will incorporate the standard by reference.

e. Redirects of Conditional Firm Service

78. NAESB developed and adopted Standard 001–21.5.2.1 as part of its response to the Commission's directive in Order No. 890 to implement conditional firm service; it provides that redirects of conditional firm service do not affect the conditions applicable to the parent reservation.

i. Comments

79. When the evaluation of a request for a redirect of conditional firm service indicates that such redirected service can be provided without conditions, Entergy requests clarification that under Standard 001–21.5.2.1 ''such service may be granted without the application of conditions so long as conditions are retained on the Parent Reservation.''[74]

ii. Commission Determination

80. Standard 001–21.5.2.1 represents a consensus approach agreeable to all six segments of the industry, and is not inconsistent with Commission policies. Therefore, as proposed in the WEQ Version 002.1 NOPR, we will incorporate Standard 001–21.5.2.1 by reference into our regulations, as we proposed in the WEQ Version 002.1 NOPR. As to Entergy's request for clarification, we find no reason why the condition should apply if the evaluation of a request for redirect of conditional firm service shows that such redirected service can be provided without conditions. We note, however, that under Standard 001–21.5.2.1, the condition would remain on the parent reservation.

f. Accounting for Conditional Firm Service in Available Transfer Capability Calculations

i. Comments

81. EPSA contends that there is no standard governing the treatment of conditional firm service in available transfer capability calculations or requiring transmission providers to post the methodology that they use to account for conditional firm service in these calculations. Thus, EPSA argues that the Version 002.1 Standards give the transmission provider too much discretion.[75]

ii. Commission Determination

82. We agree with EPSA that the Version 002.1 standards do not provide a uniform methodology for treating conditional firm service in available transfer capability calculations. But Order No. 890 did not request NAESB to develop the methodology for transfer capability calculations. NERC has developed Standard MOD–001–1 which requires that the Available Transfer Capability Implementation Document (required by NAESB Standard 001–13.1.5 to be posted on OASIS) includes

[72] Entergy at 5–6. Entergy's comments refer to 18 CFR 33.6, which is the regulation covering form of notice. We presume that Entergy intends to refer to 18 CFR 37.6(e)(3). To the extent Entergy's comments are aimed at 18 CFR 33.6, we see no merit in its argument, because this regulation governs form of notice for applications pursuant to section 203 of the Federal Power Act, which appear to be inapplicable to this issue.

[73] AWEA at 4–5, EPSA at 18–19.

[74] Entergy at 6.

[75] EPSA at 20–21.

information describing how the available transfer capability methodology is implemented ''in such detail that, given the same information used by the Transmission Service Provider, the results of the [available transfer capability] or [available flowgate capacity] calculations can be validated.'' [76] Therefore, the methodology used to calculate available transfer capability or available flowgate capability as described in the Available Transfer Capability Implementation Document will be posted on OASIS and should include the treatment of conditional firm service if such calculations are to be replicable. We also note that pursuant to the requirements of Order No. 890 and Standard 001–16.1, this information nevertheless must be provided upon request. Because the methodology used to account for conditional firm service in available transfer capability calculations could affect the reliability of the Bulk-Power System, the appropriate forum for addressing EPSA's concern relating to the lack of a standard governing the treatment of conditional firm service in such calculations is the NERC standards development process.

3. Other Issues

a. Transmission Request Priority

83. NAESB revised Standard 001–4.16 to complement the Commission's policies regarding pre-confirmed transmission service requests,[77] as articulated in Order No. 890. As required by Order No. 890, NAESB standards ''give priority only to pre-confirmed non-firm point-to-point transmission service requests and short-term firm point-to-point transmission service requests'' [78] and provide that ''longer duration requests for transmission service will continue to have priority over shorter duration requests for transmission service, with pre-confirmation serving as a tie-breaker for requests of equal duration.'' [79] In addition, as requested by the Commission in Order No. 890, NAESB has developed a consensus solution to the question of whether a transmission customer should be prohibited from changing a request into a pre-confirmed request.[80]

84. The issue raised in the comments relates to whether daily network service can preempt short-term firm service under Standard 001–4.16. This standard includes Table 4–3, which illustrates the relative queue priorities of competing transmission service requests and reservations. In addition, the table describes the conditions under which a subsequent request can preempt a previously queued request or reservation, as well as the rules for offering a right-of-first-refusal.

85. Two previously adopted standards also address the queue priority for non-firm transmission service requests, *i.e.,* Standards 001–4.22 and 001–4.25. Standard 001–4.22 states that, once confirmed, a non-firm point-to-point request may not be displaced by a subsequent non-firm point-to-point request of equal duration and higher price. After a transmission provider has offered to provide non-firm transmission service to a transmission customer at a given price, the transmission customer is afforded a prescribed time limit within which to confirm the request. Standard 001–4.25 states that a transmission provider may not pre-empt a customer's request in favor of a subsequent request of the same Tier and equal duration at a higher price while the customer considers whether to confirm its request during the Customer Confirmation Time Limit, unless the subsequent request is submitted as pre-confirmed.

i. Comments

86. TranServ claims that, under Table 4–3, a request for designation of a new network resource for a single day could potentially preempt all confirmed (but conditional) short-term firm point-to-point reservations, and that those transmission customers whose reservations were displaced would be unable to retain their service. TranServ suggests that designation of a new network resource for terms less than 12 months should be considered for preemption on a par with point-to-point services. At a minimum, it argues that requests to designate a new network resource should be eligible to preempt only those point-to-point reservations of equal or shorter duration. In addition, TranServ requests Commission guidance as to whether longer term point-to-point requests should have any rights to preempt a shorter term network resource designation and whether a transmission customer whose point-to-point reservation has been displaced by a longer term request to designate a network resource has a right-of-first-refusal to modify its request to match the requested longer duration of the competing service request so it can retain its service priority.[81]

87. In its reply comments, APS opposes TranServ's proposal to allow point-to-point services the same queue priority as network customers, contending it diminishes the value of network service, which is a long term service, to be on par with that of shorter term point-to-point service requests.

88. TranServ also notes that while confirmed but conditional short-term firm reservations may be preempted based on price, confirmed non-firm reservations and unconfirmed (but within the Customer Confirmation Time Limit) non-firm requests in response to which the transmission provider has offered service may not be preempted by subsequent requests based on price, as described in Standards 001–4.22 and 001–4.25. TranServ requests that the Commission advise the industry as to whether this disparate treatment of firm and non-firm service with regard to preemption based on price should be eliminated from the standards. Specifically, TranServ asks if Table 4–3 should be revised to include the preemption of non-firm reservations based on price and if Standards 001–4.22 and 001–4.25 should be removed.[82]

ii. Commission Determination

89. TranServ's comments raise two separate arguments. First, TranServ argues that daily network service should not displace short-term firm reservations while those requests are still conditional. Standard 001–4.16 and Table 4–3, which govern the queue priorities of competing transmission service requests and reservations, reflects the Commission's policies articulated in Order No. 890,[83] and are consistent with our determinations in that order. As specified in the *pro forma* OATT, network service (regardless of contract duration) and long-term firm service (over a year) have equal reservation priority that is higher than any short-term firm service. Both network and long-term firm service can preempt short-term firm service before

[76] NERC Standard MOD–001–1 R3.1.

[77] Under the OATT, there are two types of transmission service requests. One type of request involves three steps: (1) A prospective shipper requesting service; (2) the transmission operator processing that request and responding; and (3) the prospective shipper ''confirming'' its request. The second type of request has only two steps: (1) The prospective shipper ''pre-confirms'' its request with the initial submission; and (2) if the transmission operator unconditionally grants the request, it is deemed confirmed without further contractual communications. Thus, pre-confirmed transmission service requests are those requests for which the transmission customer commits to purchasing the requested transmission service if the transmission provider grants the full amount of capability requested for the full duration requested.

[78] Order No. 890, P 1401.

[79] *Id.*

[80] *Id.* P 1392.

[81] TranServ at 4–5.

[82] *Id.* at 5–6.

[83] *See* Order No. 890, P 1505.

the conditional reservation deadlines have expired (*i.e.,* one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service).[84] In Order No. 890, the Commission clarified that the minimum term for the designation of new network resources should be the same as the minimum time period used for firm point-to-point service (*i.e.,* daily).[85]

90. Because the priority of network service of any duration is higher than that of short-term firm service, it will preempt short-term firm service during the conditional reservation period even if the short-term firm service is of longer duration. Therefore, the queue priority described in Standard 001–4.16 and Table 4–3 is consistent with the *pro forma* OATT, and we will incorporate by reference Standard 001–4.16 and Table 4–3 as proposed in the NOPR. Moreover, under the *pro forma* OATT, a customer whose reservation has been preempted does not have a right to modify its request to match the priority of the competing service request.

91. Second, TranServ contends that previously adopted standards should be modified to allow non-firm reservations to be preempted based on price. It argues that the same pricing rules that apply to firm services, which permit preemption based on price during the conditional reservation period, also should apply to non-firm service.

92. We note that the standards in question, Standards 001–4.22 and 001–4.25 (governing the queue priority for non-firm transmission service requests), were incorporated by reference in Order No. 676,[86] issued in 2006. These standards are not revised in Version 002.0 or 002.1 of the standards. Thus, TransServ's contention is beyond the scope of this proceeding.

93. In addition, we note that these standards are consistent with the *pro forma* OATT and prior Commission determinations. Under the *pro forma* OATT, the conditional reservation period applies only to firm requests for service, not to non-firm service.[87] Therefore, the NAESB standards are consistent with the Commission policies.

b. Rollover Rights for Redirects

94. In the WEQ Version 002.1 NOPR, the Commission proposed to incorporate by reference new and modified standards that relate to rollover rights. The Commission recognized that the filed NAESB standards represented only the first part of a two part process through which NAESB will fully develop standards that are consistent with the Commission's policy on rollover rights as articulated in Order Nos. 676, 890, and 890–A. In the Version 002.1 Standards submitted to the Commission as part of the first part of the aforementioned two part process, NAESB included a new definition for Unexercised Rollover Rights in WEQ–001, as well as other modifications to existing standards in WEQ–001, WEQ–003, and WEQ–013. In its Version 002.1 filing letter of February 19, 2009, NAESB stated that the second part of this process would include modifications to Standard 001–9.7, as directed by Order No. 890. NAESB also indicated that it anticipates that the results of the second part of the process will be included in a new Version 002.2 set of business practice standards, which NAESB expects will be published in the first quarter of 2010.

i. Comments

95. Two commenters requested that the Commission not incorporate by reference standards related to rollover rights for redirects.[88] Duke states that the standards developed in the first part of the process were ratified by the NAESB membership with the understanding that they would not be significantly modified during the second part of the process. However, as Duke points out, certain standards were substantially revised and a new definition for ''Unexercised Rollover Rights'' was created and included in the recommendation posted for formal comment by the Electronic Scheduling Subcommittee/Information Technology Subcommittee of NAESB. Therefore, Duke requests that the Commission defer action on these standards until the second installment of the standards is submitted. IRC agrees.

ii. Commission Determination

96. We recognize that the standards relating to rollover rights for redirects included in the Version 002.1 Standards represent only the first part of a two-part process. In addition, we understand that both Duke and IRC are concerned that the standards currently before the Commission have been substantially revised in the second part of the two part process. However, neither Duke nor IRC has expressed any substantive concerns with the standards currently before the Commission, or offered any suggested alternative to the filed standards. Given these circumstances and because we find no inconsistency between the standards governing rollover rights for redirects of transmission service in the Version 002.1 Standards and Order No. 890 and the Commission's regulations, we will incorporate these standards by reference. We expect that should Duke, IRC, or any other party have concerns with the standards being developed during the second part of the process that they will be able to raise these concerns within the NAESB process and work to achieve a consensus solution acceptable to all industry segments. We reserve judgment on any phase two standards governing rollover rights for redirects of transmission service until such time as these standards are developed and filed with the Commission for review.

c. Standard 002–5.10

97. Standard 002–5.10 requires that all template interactions with OASIS be updated to reflect the Version 1.5 OASIS standards within six months of the Version 002.1 Standards becoming effective.[89] During this six month implementation period, the standards require that OASIS nodes must also continue to support the Version 1.4 templates. The WEQ Version 002.1 NOPR did not propose a specific implementation date for compliance with any standards incorporated by reference by the Commission in a final rule.

i. Comment

98. Entergy requests clarification that Standard 002–5.10 is applicable only to the actual implementation of updated templates and not to the additional required OASIS functionalities proposed in the Version 002.1 Standards, which may require modification to or development of supporting software applications.[90]

ii. Commission Determination

99. The Commission will grant the requested clarification. The Commission finds that Standard 002–5.10 is applicable only to the actual implementation of updated templates and not to the additional required OASIS functionalities proposed in the Version 002.1 Standards, which may require modification to or development of supporting software applications. As discussed in the Implementation section

[84] *Pro forma* OATT, section 13.2.

[85] Order No. 890, P 1505.

[86] *See* Order No. 676, P 19.

[87] *Open Access Same-Time Information System and Standards of Conduct,* Final Rule, Order No. 638, FERC Stats. & Regs. ¶ 31,093, at 31,437 (2000).

[88] Duke at 5; ISO Council at 4–5.

[89] As explained above, *see* n.17 *supra,* the Version 1.5 OASIS Standards form part of the Version 002.1 Business Practice Standards package.

[90] Entergy at 4–5.

of this Final Rule,[91] the Commission is not requiring compliance with the OASIS requirements established in this rule before the first day of the first quarter occurring 365 days after approval of the referenced NERC Reliability Standards by all applicable regulatory authorities.

d. Order No. 717 Issues

100. In the WEQ Version 002.1 NOPR, the Commission recognized that a specific standard, Standard 001–13.1.2, contained references to Commission regulations regarding the posting of Standards of Conduct-related information. These regulations were revised by Order No. 717.[92] The Commission went on to acknowledge that the references in the standard were no longer accurate and did not conform to the Commission's current requirements, and therefore did not propose to require public utilities to comply with any portion of the standard that was inconsistent with Order No. 717.

i. Comments

101. Duke [93] requests that the Commission not adopt NAESB standards that conflict with Order No. 717, and instead adopt the revised NAESB standards whenever they are filed with the Commission.[94] Or, in the alternative, Duke states the Commission should provide greater clarity that transmission service providers do not have to comply with any posting or other requirements in the approved NAESB standards that have been revised by Order No. 717.[95] Similarly, APS requests that the Commission decline to incorporate by reference Standard 001–21.3.1.2.2 (which states that waivers of the Biennial Reassessment be posted on OASIS as a discretionary action) because such posting of discretionary actions is no longer required under Order No. 717.[96]

ii. Commission Determination

102. We addressed this concern in the WEQ Version 002.1 NOPR, in which we stated that ''we do not propose to require public utilities to comply with any portion of the standard that requires information to be posted in a manner inconsistent with Order No. 717.'' While this statement related directly to Standard 001–13.1.2, we clarify here that we will not require public utilities to comply with any portion of the Version 002.1 standards that requires information to be posted in a manner inconsistent with Order No. 717.

e. Coordination of Requests Across Multiple Transmission Systems

103. In Order No. 890, the Commission directed transmission providers, working through NAESB, ''to develop business practice standards related to coordination of requests across multiple transmission systems.'' [97]

i. Comments

104. North Carolina Electric Membership Cooperative (NCEMC) urges the Commission to monitor closely NAESB's progress on developing standards for the coordination of transmission service requests across multiple transmission systems, including requiring status reports as appropriate. NCEMC argues that they have experienced difficulties when trying to conduct transactions across two transmission providers' systems. Because this issue was originally addressed by the Commission in response to comments filed by TDU Systems almost three years ago, NCEMC believes that it is necessary for the Commission to exert more pressure on NAESB to develop this standard, as they have yet to begin drafting it.

ii. Commission Determination

105. We agree that insufficient progress has been made on this issue. While we acknowledge that development of standards addressing this issue is included in NAESB's 2009 WEQ Annual Plan,[98] we nevertheless urge NAESB to address this issue as soon as possible. Accordingly, we request that NAESB provide the Commission with a status report concerning its progress on this issue every six months, counting from the date this final rule is published in the **Federal Register,** until NAESB's adoption of the applicable standard(s).

f. Waivers

106. NYISO asks the Commission to take the opportunity to reconsider its position regarding the process for filing waivers. NYISO states that it currently is required to make a waiver filing every time the Commission incorporates a revised NAESB standard. It asks the Commission to revise this process so that recipients of waivers only need to file requests to renew their waivers when NAESB adopts (and the Commission incorporates by reference) new standards or revises existing ones in a substantive way. NYISO argues that tracking, analyzing and making frequent waiver filings are burdensome tasks and do not benefit NYISO.

i. Commission Determination

107. When the Commission adopts new requirements, it is incumbent on a public utility that wishes to maintain an existing waiver to making a showing to the Commission that, based on the particular facts at issue, the waiver should continue. The determination of whether a waiver from a prior requirement should apply to a revised requirement is one that needs to be made on a case-by-case basis. We do not agree that waivers should automatically be extended without Commission review and approval. Accordingly, we deny NYISO's request.

g. Suggestion To Develop Revised Standards on Available Flowgate Capability/Total Flowgate Capability Postings

108. NERC Standard MOD–030–02 R11 provides definitions of Available Flowgate Capacity and Total Flowgate Capability and a formula to convert Available Flowgate Capacity to Available Transfer Capability. In Order No. 890, the Commission directed public utilities, working through NERC, to develop in the MOD–001 standard a rule to convert available flowgate capacity into available transfer capability values.[99]

i. Comments

109. TranServ comments they are not in support of posting of flow-based Available Flowgate Capacity and the related transmission system metrics used to convert Available Flowgate Capacity to an effective Available Transfer Capability. It seeks clarification on how the requirements of 18 CFR 37.6 to post Available Transfer Capability, Total Transfer Capability, Capacity Benefit Margin and Transmission Reliability Margin are to be addressed by a Transmission Provider selecting to use the Flow-based Available Transfer Capability Methodology as specified in NERC Standard MOD–030. It further states there is no guidance on how the Transmission Provider is to convert a

[91] *See infra* P 126.

[92] *Standards of Conduct for Transmission Providers,* Order No. 717, 73 FR 63796, FERC Stats. & Regs ¶ 31,280 (2008).

[93] Duke at 3–4.

[94] Duke states that NAESB's Executive Committee approved modifications to the business practices to make them consistent with Order No. 717 on May 12, 2009, and they believe NAESB will ''file these standards with the Commission soon.''

[95] For instance, Duke references standards WEQ 001–13.1.2, WEQ 001–21.3.1.2.2, WEQ 001–13.1, and WEQ 002–3.4b(ii) as examples of standards containing posting requirements that are no longer required by Order No. 717.

[96] APS at 4.

[97] Order No. 890, P 1377.

[98] Item 2, (a), (iii), 1.

[99] Order No. 890, P 211.

Total Flowgate Capability to an effective path Total Transfer Capability, nor how to convert flowgate Capacity Benefit Margin or Transmission Reliability Margin into an equivalent path-based value. TranServ also requests that the Commission direct either NAESB or NERC to provide the necessary computational standards to meet the Commission's posting requirements of 18 CFR 37.6.

ii. Commission Determination

110. Responsibility for developing an acceptable formula to convert available flowgate capacity to available transfer capability rests with NERC, and not NAESB. Our focus in this rulemaking is to evaluate NAESB's revised business practice standards, and the comments filed in response to our NOPR, to determine whether we should incorporate NAESB's revised standards by reference into our regulations. Thus, we find that this issue is beyond the scope of this proceeding.

h. Incorporation by Reference

i. Comments

111. While NRECA and APPA[100] do not object to the substance of the NAESB standards, they oppose the Commission's proposal to incorporate by reference non-public standards into its regulations and the OATTs of public utilities. NRECA and APPA claim that by incorporating standards by reference, the Commission is depriving those industry participants that are unable to participate in the time- and resource-intensive NAESB standards development process of adequate notice or a reasonable opportunity to comment on the standards before they are enacted. They argue that the Commission's ordinary notice and comment rulemaking process is more cost-effective for smaller stakeholders, as they are provided with the opportunity to submit comments before a neutral arbiter without incurring the costs involved in the time- and resource-intensive private standards development process. In addition, NRECA and APPA contend that, because these standards are incorporated by reference, industry participants without knowledge of, or practical access to, these rules may have to defend themselves against enforcement action by the Commission based on alleged noncompliance with the standards. Specifically, NRECA and APPA cite the enhancement of the Commission's civil penalty authority in EPAct 2005 and the possibility that such penalties could be enforced against transmission customers for violations of the OATT.

112. Additionally, NRECA and APPA claim that the Commission has taken the National Technology Transfer and Advancement Act of 1995 (NTT&AA) out of context, as it applies to practices regarding federal procurement contracts and places no affirmative obligations on agencies outside of that context.

113. Therefore, they contend that the Commission can and should reproduce the content of the standards in order to provide for greater transparency and compliance.

114. To address these issues, NRECA and APPA recommend that the Commission ''(1) cease incorporating NAESB standards by reference into the *pro forma* OATT and instead promulgate its standards by ordinary notice and comment rulemaking; (2) provide substantially greater access to those materials that are promulgated in regulations; (3) or, at a minimum, clarify that FERC will not attempt to assess civil penalties on transmission customers for violations of standards that have merely been incorporated by reference into regulations and OATTs of public utilities.'' [101] To support their position for Commission publication of the standards, NRECA and APPA claim that the United States Court of Appeals for the Fifth Circuit clarified that the contents of privately developed standards are not subject to copyright protections once incorporated.[102]

ii. Commission Determination

115. When the Commission first began to establish technical standards for communication protocols and business practices for the gas and electric industries, the Commission sponsored technical conferences and meetings at which all industry participants were entitled to participate. For example, when the Commission sponsored the process leading up to the OASIS standards adopted in Order No. 889, it relied on two ad hoc committees comprised of volunteers who offered to host and conduct their own meetings, open to participants from various industry sectors and attended by staff observers, to seek consensus on proposed OASIS standards. These committees had no formal structure or voting rules.

116. The NAESB process for both the gas and electric industries resulted in streamlining the standards development process and making it more efficient by creating regularized procedures and voting rules. Under the NAESB approved ANSI consensus procedures, each industry segment is represented and it is no longer necessary for all participants to attend conferences at the Commission in order to ensure their votes are heard. They can now participate either directly or indirectly through their industry representatives at NAESB. From our experience, the NAESB process is far more efficient and cost effective method of developing technical standards for the industries involved than the use of a notice and comment rulemaking process involving numerous technical conferences in Washington that all believe they have to attend.

117. While the NAESB process includes numerous volunteers from the industries, NAESB incurs administrative expenses which it must cover. Membership dues and fees for obtaining standards provide a reasonable means of obtaining the necessary revenue stream.[103] When the Commission weighed the advantages achieved by the NAESB standards development process against the cost to the Commission and the industry of developing these standards through notice and comment rulemaking, we found, and continue to find, that the benefits of having a well-established, consensus process outweigh whatever costs non-members may incur in having to obtain copies of the standards.

118. In choosing to take advantage of the efficiency of the NAESB process, we followed the government regulations that require the use of incorporation by reference. These rules appropriately balance the interest of the standards organization and the expediency of governmental use of privately developed standards. Under section 552(a) of title 5, material may be incorporated by reference when such material is reasonably available to the public. Under the regulations adopted by the **Federal Register**, material incorporated by reference is maintained at the Office of the Federal Register for public viewing.[104] As part of the

[100] NCEMC supports the comments filed by NRECA and APPA.

[101] NRECA and APPA at 7.

[102] NRECA and APPA at 9. These commenters cite *Veeck* v. *Southern Building Code Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002), *cert. denied*, 539 U.S. 969 (2003) (*Veeck*) for the proposition that a model code incorporated into the law becomes part of the ''public domain'' and, therefore, is not copyrightable. They also cite *John G. Danielson, Inc.* v. *Winchester-Conant Properties, Inc.*, 322 F.3d 26, 39 (1st Cir. 2003) (*Danielson*) as supporting this proposition.

[103] American National Standards Institute, Why Charge for Standards, *http://www.ansi.org/help/charge_standards.aspx?menuid=help*. Without such a revenue source, the Commission would have to consider imposing mandatory charges, similar to the mandatory charges to support NERC. 18 CFR 39.4(e).

[104] 1 CFR 51.3.

incorporation process, the material also must be available and obtainable by the user.[105] As we have pointed out in past orders, the NAESB standards are easily and readily available from NAESB, as well as being available at the Commission and the Office of the Federal Register. For example, for those who want to view the standards in order to make comments with the Commission, NAESB makes the standards available for free for a three day period.[106] Even for those non-members seeking to purchase a copy, the standards are available for $900, which we do not find prohibitive, given the costs of otherwise participating in a notice and comment rulemaking proceeding, including the hiring of legal counsel.[107]

119. The *Veeck* case cited by the commenters dealt only with a third-party reprinting of local law derived from incorporation of a model building code. The case did not invalidate the copyrights held by the organization over their standards, nor did it require, nor authorize the government to provide copies of private sector standards either prior to or after incorporation by reference.[108]

120. Indeed, OMB Circular A–119 requires government agencies incorporating privately developed standards to ''observe and protect the rights of the copyright holder and any other similar obligations.'' [109] In addition to copyright, the Commission also is barred contractually from reproducing the standards for distribution to third parties.[110]

121. Nor do we find that the need for public utilities to obtain standards to comply with Commission regulations is a sufficient reason to reconsider the Commission's reliance on the NAESB process. Public utilities must incur numerous fees as a cost of doing business, including the payment of Commission annual charges, the filing of mandated reports and forms, and the costs incurred in having to maintain those records. As to commenters' argument that the Commission has misinterpreted section 12d of the NTT&AA, we find that the Act and the accompanying regulations are not limited to procurement specifications, as suggested in the comments, but include adoption of standards ''as a means to carry out policy objectives or activities.'' [111] In any event, as discussed above, we see benefits to the continued role of NAESB in developing electronic communication and business practice standards for public utilities, whether required by NTT&AA or not.

III. Implementation Dates and Procedures

122. OATI [112] supports the Commission's proposed actions and has no immediate concerns with any of the proposed standards. Both OATI and TranServ suggest that the Commission should defer implementation of WEQ–002, WEQ–003, and WEQ–013 for a minimum of six to nine months to allow transmission providers sufficient time to modify their existing OASIS systems and make necessary changes to their processes, procedures, and other supporting software systems. Both also suggest avoiding implementation during the summer or winter peak seasons.

123. APS argues that because the postings for the ATC Information Link and Postback Requirements relate to the Implementation Documents required by the NERC standards, there should not be an effective requirement to post items related to these documents prior to the date on which the underlying NERC rules take effect. Therefore, APS requests that the requirements of Standards 001–18 through 001–18.2 have the same effective date as the NERC available transfer capability related standards.

124. Entergy argues that because Standards 001–13.1.5, 001–14.1, and 001–15.1 relate to, and potentially depend on, the NERC reliability standards, the Commission should consider the need to coordinate the effective dates of these two sets of standards.[113]

125. While Entergy acknowledges the difficulty of developing a single industry methodology for implementing Standard 001–21.1.6, because Entergy believes that it does not provide significant guidance as to how transmission providers should implement this standard, Entergy argues that its implementation will require significant software development. To address this issue, Entergy asks that the Commission set the effective date of this provision to coincide with the date at which the OASIS vendors will have developed the appropriate software modifications necessary to implement this standard.[114]

A. Commission Determination

126. In light of the time needed to plan and complete the complex tasks involved in implementing the standards we are adopting in this Final Rule, as well as the desirability of aligning the implementation of the requirements in these standards that relate to the NERC standards being adopted in Docket No. RM08–19–000, we will make the implementation date for compliance with the NAESB standards we are incorporating by reference in this Final Rule coincident with the implementation date applicable to the NERC reliability standards that the

[105] 1 CFR 51.9.

[106] *http://www.naesb.org/misc/NAESB_Nonmember_Evaluation_LockLizard.pdf.*

[107] The cost of obtaining the standards likely would be no higher than the legal cost to prepare the pleading at issue. *http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_3.html.* ($180–$380/hour depending on experience under the Laffey Matrix estimation procedure); *http://www.altmanweil.com/index.cfm/fa/r.resource_detail/oid/87716caa-56df-4ad9-b375-9e9366ba6d60/resource/New_Survey_Provides_Snapshot_of_Law_Firm_Economics_Across_US.cfm.* (2007 median Washington DC legal rates of $455/hour for partners and $295/hour for associates).

[108] *Veeck*, 293 F.3d at 803 (case deals only with the ''relationship between non-federal government entities and copyright holders''). The court also emphasized that it was not dealing with extrinsic standards that government agencies incorporate by reference as part of the technical requirements of a government regulation, similar to our use of the NAESB standards as technical implementation of the Commission's OASIS regulations. *Veeck*, 293 F.3d at 84; *see CCC Info. Services* v. *Maclean Hunter Market Reports, Inc.*, 44 F.3d 61 (2nd Cir. 1994); and *Practice Management Info. Corp.* v. *American Medical Ass'n*, 121 F.3d 516 (9th Cir. 1997), *opinion amended by* 133 F.3d 1140 (9th Cir. 1998). Unlike *Veeck*, NAESB does not solicit incorporation by reference. *Veeck*, 293 F.3d at 805. Likewise, in *Danielson,* the court found that architectural drawings were not made into judicial decisions and statutes in the public domain merely because they were referenced in a recorded deed.

[109] OMB Circular No. A–119 (Revised February 10, 1998), at 6J, *http://www.whitehouse.gov/omb/rewrite/circulars/a119/a119.html. See* 28 U.S.C.§ 1498 (federal government may be liable for copyright infringement). Other government agencies similarly have denied requests to publish copies of privately developed standards. *See Updating OSHA Standards Based on National Consensus Standards*, 74 FR 46350–46361 (September 9, 2009) (''OSHA notes that copyright laws protect national consensus standards''); *Airworthiness Directives; Airbus Model A300 Airplanes*, 72 FR 6923 (Feb. 14, 2007) (finding that incorporated by reference materials ''do not lose their copyright protection''). Taken to its logical extreme, NRECA and APPA's argument would require that a school system's decision to require children to acquire and read the novel ''Fahrenheit 451'' over summer vacation operates to vitiate the copyright and obligates the system to reprint the text of the novel. *See Veeck*, 293 F.3d at 804–805 (copyrighted works do not ''become law'' merely because a statute refers to them); *CCC Info. Servs.* 44 F.3d at 74 (''It scarcely extends CCC's argument to require that all such assigned books lose their copyright—as one cannot comply with the legal requirements without using the copyrighted works'').

[110] Agreement Granting Permission to Copy Standards (August 9, 1996), *http://www.naesb.org/pdf4/gisb_copy_permission_to_ferc_080996.pdf.*

[111] Public Law 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997). OMB Circular A–119 (agency ''must use voluntary consensus standards, both domestic and international, in its regulatory'' as well as procurement activities).

[112] Open Access Technology International, Inc. (OATI) is a supplier of software for the electric industry, including OASIS and back-office supporting systems.

[113] Entergy at 6–7.

[114] *Id.* at 4–5.

commission approved in an order being issued concurrently with this order. Accordingly, public utilities subject to these requirements will not be required to comply with these standards until the first day of the first quarter occurring 365 days after approval of the referenced Reliability Standards by all applicable regulatory authorities.

127. However, as we stated above, a revised Attachment C to the OATT must be filed on or before 275 days after approval of the NERC Reliability Standards being addressed in Docket No. RM08–19–000 by all applicable regulatory authorities.

128. Consistent with our regulation at 18 CFR 35.28(c)(vi), each electric utility must revise its OATT to include the Version 002.1 WEQ standards that we are incorporating by reference herein. For standards that do not require implementing tariff provisions, the Commission will allow the utility to incorporate the WEQ standard by reference in its OATT. Moreover, as we proposed in the WEQ Version 002.1 NOPR, to lighten the burden associated with a stand-alone filing of a revised tariff reflecting the standards incorporated by reference in this Final Rule, we are giving public utilities the option of including these changes as part of an unrelated tariff filing, provided that the revised tariff is filed with the Commission at least ninety days before the prescribed date for compliance with the revised standards (the first day of the first quarter occurring 365 days after approval of the referenced Reliability Standards by all applicable regulatory authorities). In addition, consistent with our prior practice, if a public utility fails to file the required tariff revisions prior to the compliance date, it nonetheless must abide by these standards even before it has updated its tariff to incorporate these changes.

129. If adoption of these standards does not require any changes or revisions to existing OATT provisions, public utilities may comply with this rule by adding a provision to their OATTs that incorporates the standards adopted in this rule by reference, including the standard number and Version 002.1 to identify the standard. To incorporate these standards into their OATTs, public utilities must use the following language in their OATTs: [115]

- Open Access Same-Time Information Systems (OASIS), Version 1.5 (WEQ–001, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009), with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0, 001–9.7, 001–14.1.3, and 001–15.1.2;
- Open Access Same-Time Information Systems (OASIS) Standards & Communications Protocols, Version 1.5 (WEQ–002, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.5 (WEQ–003, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Coordinate Interchange (WEQ–004, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Manual Time Error Correction (WEQ–006, Version 001, October 31, 2007, with minor corrections applied on Nov. 16, 2007);
- Inadvertent Interchange Payback (WEQ–007, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Transmission Loading Relief—Eastern Interconnection (WEQ–008, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Gas/Electric Coordination (WEQ–011, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);
- Public Key Infrastructure (PKI) (WEQ–012, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009); and
- Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.5 (WEQ–013, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009).

130. If a public utility requests waiver of a standard, it will not be required to comply with the standard until the Commission acts on its waiver request. Therefore, if a public utility has obtained a waiver or has a pending request for a waiver, its proposed revision to its OATT should not include the standard number associated with the standard for which it has obtained or seeks a waiver. Instead, the public utility's OATT should specify those standards for which the public utility has obtained a waiver or has pending a request for waiver. Once a waiver request is denied, the public utility will be required to include in its OATT the standard(s) for which waiver was denied.

IV. Notice of Use of Voluntary Consensus Standards

131. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the Final Rule stating whether the adopted standard is a voluntary consensus standard or a government-unique standard. In this rulemaking, the Commission is incorporating by reference voluntary consensus standards developed by the WEQ.

V. Information Collection Statement

132. OMB's regulations in 5 CFR 1320.11 (2005) require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB assigns an OMB control number and an expiration date. Respondents subject to the filing requirements of this Final Rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

133. This Final Rule will affect the following existing data collections: Standards for Business Practices and Communication Protocols for Public Utilities (FERC–717) and Electric Rate Schedule Filings (FERC–516).

134. The following burden estimate is based on the projected costs for the industry to implement revisions to the WEQ Standards currently incorporated by reference into the Commission's regulations at 18 CFR 38.2 and to implement the new standards adopted by NAESB that we are incorporating by reference in this Final Rule.

[115] As shown, the tariff language to be used should reference Version 001 of WEQ–006, as we are not incorporating by reference Version 002.1 of WEQ–006 at this time.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–516	176	1	6	1,056
FERC–717	176	1	30	5,280
Totals				6,336

Total Annual Hours for Collection: (Reporting and Recordkeeping, (if appropriate)) = 6336 hours.

Information Collection Costs: The Commission projects the average annualized cost for all respondents to be the following:[116]

	FERC–516	FERC–717
Annualized Capital/Startup Costs	$390,720	$2,344,320
Annualized Costs (Operations & Maintenance)	N/A	
Total Annualized Costs	390,720	2,344,320

135. The Commission sought comments on the burden of complying with the requirements imposed by these requirements. No comments were filed addressing the reporting burden.[117]

136. The Commission's regulations adopted in this rule are necessary to establish a more efficient and integrated wholesale electric power grid. Requiring such information ensures both a common means of communication and common business practices that provide entities engaged in the wholesale transmission of electric power with timely information and uniform business procedures across multiple transmission providers. These requirements conform to the Commission's goal for efficient information collection, communication, and management within the electric power industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

137. OMB regulations[118] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB. These information collections are mandatory requirements.

Title: Standards for Business Practices and Communication Protocols for Public Utilities (*formerly* Open Access Same Time Information System) (FERC–717); Electric Rate Schedule Filings (FERC–516).

Action: Final Rule.

OMB Control No.: 1902–0096 (FERC–516); 1902–0173 (FERC–717).

Respondents: Business or other for profit (Public Utilities—Not applicable to small businesses).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This rule will upgrade the Commission's current business practice and communication standards to comply with the Commission's determinations in Order Nos. 676–C, 890, 890–A, and 890–B, to explicitly include demand resources in the definitions of certain ancillary services, to clarify parties' rollover rights, to clarify the differences in timing requirements for the Western Electricity Coordinating Council and all other interconnections by modifying the Coordinate Interchange Timing Tables contained in Appendix D of the Coordinate Interchange Standards (WEQ–004), and to modify the Transmission Loading Relief—Eastern Interconnection Standards (WEQ–008) to add clarity and ensure that the business practice standards are consistent with NERC reliability standard IRO–006.

138. These changes will ensure that potential customers of open access transmission service receive access to information that will enable them to obtain transmission service on a non-discriminatory basis, will assist the Commission in maintaining a safe and reliable infrastructure and also will assure the reliability of the interstate transmission grid. The implementation of these standards and regulations is necessary to increase the efficiency of the wholesale electric power grid.

139. The information collection requirements of this Final Rule are based on the transition from transactions being made under the Commission's existing business practice standards to conducting such transactions under the proposed revisions to these standards and to account for the burden associated with the new standard(s) being proposed here.

140. *Internal Review:* The Commission has reviewed the revised business practice standards and has made a determination that the revisions adopted in this Final Rule are necessary to maintain consistency between the business practice standards and reliability standards on this subject. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

141. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415/Fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov*.

VI. Environmental Analysis

142. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human

[116] The total annualized cost for the information collections is $2,344,320. This number is reached by multiplying the total hours to prepare responses (6,336) by an hourly wage estimate of $370 (a composite estimate that includes legal, technical and support staff rates, $250 + $95 + $25 = $370), 6,336 hours × $370/hour = $2,344,320.

[117] We note, however, that two comments argued that it would be too costly for small entities to obtain copies of the NAESB Standards from NAESB. We addressed these comments in the preamble of this Final Rule.

[118] 5 CFR 1320.11.

environment.[119] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[120]

143. The actions required by this Final Rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of electric power that requires no construction of facilities.[121] Therefore, an environmental assessment is unnecessary and has not been prepared in this Final Rule.

VII. Regulatory Flexibility Act Certification

144. The Regulatory Flexibility Act of 1980 (RFA)[122] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on public utilities, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses.

145. The Commission has followed the provisions of both the RFA and the Paperwork Reduction Act on potential impact on small business and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to be considered in a rulemaking to lessen the impact on small entities: tiering or establishment of different compliance or reporting requirements for small entities, classification, consolidation, clarification or simplification of compliance and reporting requirements, performance rather than design standards, and exemptions. As the Commission originally stated in Order No. 889, the OASIS regulations now known as Standards for Business Practices and Communication Protocols for Public Utilities, apply only to public utilities that own, operate, or control transmission facilities subject to the Commission's jurisdiction and should a small entity be subject to the Commission's jurisdiction, it may file for waiver of the requirements.[123] This is consistent with the exemption provisions of the RFA. Accordingly, pursuant to section 605(b) of the RFA,[124] the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VIII. Document Availability

146. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

147. From FERC's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.[125]

148. User assistance is available for eLibrary and the FERC's website during our normal business hours. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

IX. Effective Date and Congressional Notification

149. This Final Rule will become effective January 4, 2010. The Commission has determined with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[126]

List of Subjects in 18 CFR Part 38

Conflict of interests, Electric power plants, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends Chapter I, Title 18, part 38 of the *Code of Federal Regulations,* as follows:

PART 38—BUSINESS PRACTICE STANDARDS AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 38.2 by:

■ a. Revising paragraphs (a)(1) through (a)(5) and (a)(7) through (a)(11) as set forth below.

■ b. Amending paragraph (b) to add the phrase ''(713) 356–0060, *http://www.naesb.org*'' after the phrase ''77002'' and adding ''(202) 502–8371'' after the phrase ''20426.''

§ 38.2 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) * * *

(1) Open Access Same-Time Information Systems (OASIS), Version 1.5 (WEQ–001, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009, with the exception of Standards 001–0.1, 001–0.9 through 001–0.13, 001–1.0, 001–9.7, 001–14.1.3, and 001–15.1.2);

(2) Open Access Same-Time Information Systems (OASIS) Standards & Communication Protocols, Version 1.5 (WEQ–002, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(3) Open Access Same-Time Information Systems (OASIS) Data Dictionary, Version 1.5 (WEQ–003, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(4) Coordinate Interchange (WEQ–004, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(5) Area Control Error (ACE) Equation Special Cases (WEQ–005, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

* * * * *

(7) Inadvertent Interchange Payback (WEQ–007, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(8) Transmission Loading Relief—Eastern Interconnection (WEQ–008, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

[119] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regs. Preambles ¶ 30,783 (1987).

[120] 18 CFR 380.4.

[121] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[122] 5 U.S.C. 601–612.

[123] We also have provided for requests of waiver in instances where compliance would be very burdensome and a waiver would not diminish the overall benefits of the standards. *See supra* P 107, 130.

[124] 5 U.S.C. 605(b).

[125] NAESB's Dec. 26, 2007 submittal is also available for viewing in eLibrary. The link to this file is as follows: *http://elibrary.ferc.gov:0/idmws/doc_info.asp?document_id=13566661.*

[126] *See* 5 U.S.C. 804(2).

(9) Gas/Electric Coordination (WEQ–011, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009);

(10) Public Key Infrastructure (PKI) (WEQ–012, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009); and

(11) Open Access Same-Time Information Systems (OASIS) Implementation Guide, Version 1.5 (WEQ–013, Version 002.1, March 11, 2009, with minor corrections applied May 29, 2009 and September 8, 2009).

* * * * *

[FR Doc. E9–28619 Filed 12–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM82

Community Residential Care Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Community Residential Care regulations to update the standards for VA approval of facilities, including standards for fire safety and heating and cooling systems. This rule also establishes a 12-month duration for VA approvals and would authorize provisional approval of certain facilities. Finally, this rule eliminates the statement of needed care requirement and clarifies that it is the care providers at the facility that determine the services needed by a particular veteran.

DATES: Effective Date: This amendment is effective January 4, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this rule as of January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Daniel Schoeps, Office of Geriatrics and Extended Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 461–6763. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on November 26, 2008 (73 FR 71999), VA proposed to amend its community residential care regulations, which are codified at 38 CFR 17.61 through 17.72. The regulations implement 38 U.S.C. 1730, which provides that VA health care personnel may assist veterans by referring them for placement in a privately or publicly-owned community residential care facility if certain criteria are met. As a condition of approval, the regulations require facilities to meet industry-wide fire safety standards and to have safe and functioning systems for heating. We proposed to amend the regulations to update the standards for VA approval of community residential care facilities and clarify program requirements.

We received two comments on the proposed rule. Both commenters fully supported the proposed rule and discussed generally the importance of VA's requirement that community residential care facilities comply with certain provisions of the National Fire Protection Association (NFPA) 101, Life Safety Code (2006 edition), and the NFPA 101A, Guide on Alternative Approaches to Life Safety (2007 edition). We are grateful to the commenters for their submissions, and make no changes based on the comments.

This final rule amends § 17.63 to ensure that veterans who are placed in privately or publicly owned community residential care facilities are provided safe living conditions by making VA's approval contingent upon a facility's implementation of the NFPA fire safety guidelines in chapters 1–11, 32–33, 43, and Annex A of the NFPA 101, NFPA's Life Safety Code Handbook, Tenth Edition (2006 edition), and NFPA 101A, Guide on Alternative Approaches to Life Safety (2007 edition). These documents are incorporated by reference in this final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Further, the final rule amends § 17.63(a)(3) to require safe and functioning heating and cooling systems. VA intends that facilities will meet the standard for heating and cooling systems in the county, parish, or other similar jurisdiction where a facility is located. These provisions will help to ensure that veterans referred by VA to an approved facility for community care are provided with safe and comfortable living conditions.

The final rule removes the ''statement of needed care'' requirement in § 17.63(b) and (i)(2)(i) for veterans referred by VA to a community residential care facility. We are removing this requirement because VA does not determine or control the care that is provided to a veteran in an approved facility under this program. This amendment clarifies that VA relies on the heath care professionals employed by the facility and facility officials to determine the care that a particular veteran needs.

We are also removing § 17.64, which prescribes exceptions to VA standards for community residential care facilities that participated in VA's program prior to the effective date of regulations promulgated in 1989. There are no facilities that currently qualify for the exceptions and there are no facilities that could qualify for an exception in the future.

Regarding VA approval of facilities, we clarify that such approvals shall be for a 12-month period if all the standards in § 17.63 are met. We also clarify that VA may grant a provisional approval if the facility does not meet one or more of the standards in § 17.63, provided that the deficiencies do not jeopardize the health or safety of the residents and that the facility management and VA have agreed to a plan for correcting any deficiencies in a specified amount of time. The provisional approval provision allows VA to continue recommending facilities with temporary deficiencies when it is in the best interest of residents to do so. These amendments will help to ensure that approvals are based on current information and, given VA's practice of inspecting each facility at least once in each 12-month period, should not impose an additional burden on VA or on facilities.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by the State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) 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, State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action planned or taken by another agency; (3) materially alter the budgetary impact of entitlements, 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.

The economic, interagency, legal and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act

This document contains no collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule would have an insignificant economic impact on a few small entities. The final rule would likely affect fewer than 100 of the 2,800 community residential care facilities approved for referral of veterans under the regulations. Also, the additional costs for compliance with the final rule would constitute an inconsequential amount of the operational costs of such facilities. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence and 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, veterans.

Approved: November 13, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

§ 17.62 [Amended]

■ 2. Amend § 17.62 by removing paragraph (b) and redesignating paragraphs (c) through (g) as paragraphs (b) through (f), respectively.

■ 3. Amend § 17.63 by:

■ a. In paragraph (a)(2), removing ''Office of Regulations Management (02D). Room 1154,'' and adding, in its place, ''Office of Regulation Policy and Management (02REG), Room 1068,'', by removing ''20420,'' and adding, in its place, ''20420, 202–461–6750,'', and by revising the first sentence.

■ b. Revising paragraph (a)(3).

■ c. Removing and reserving paragraph (b).

■ d. In paragraph (g), removing ''specified in the statement of heeded care''.

■ e. In paragraph (i), removing paragraph (i)(2)(i) and redesignating paragraphs (i)(2)(ii) and (i)(2)(iii) as paragraphs (i)(2)(i) and (i)(2)(ii), respectively.

The revisions read as follows:

§ 17.63 Approval of community residential care facilities.

* * * * *

(a) * * *

(2) Meet the requirements of chapters 1–11, 32–33, and 43 and Annex A of the NFPA 101, the National Fire Protection Association's Life Safety Code Handbook, Tenth Edition (2006 Edition), and NFPA 101A, Guide on Alternative Approaches to Life Safety (2007 Edition). * * *

(3) Have safe and functioning systems for heating and/or cooling, as needed (a heating or cooling system is deemed to be needed if VA determines that, in the county, parish, or similar jurisdiction where the facility is located, a majority of community residential care facilities or other extended care facilities have one), hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.

* * * * *

§ 17.64 [Removed]

■ 4. Remove and reserve § 17.64.

■ 5. Revise § 17.65 to read as follows:

§ 17.65 Approvals and provisional approvals of community residential care facilities.

(a) An approval of a facility meeting all of the standards in 38 CFR 17.63 based on the report of a VA inspection and any findings of necessary interim monitoring of the facility shall be for a 12-month period.

(b) The approving official, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, may provide a community residential care facility with a provisional approval if that facility does not meet one or more of the standards in 38 CFR 17.63, provided that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and VA agree to a plan of correcting the deficiencies in a specified amount of time. A provisional approval shall not be for more than 12 months and shall not be for more time than VA determines is reasonable for correcting the specific deficiencies.

(c) An approval may be changed to a provisional approval or terminated under the provisions of §§ 17.66 through 17.71 because of a subsequent failure to meet the standards of § 17.63 and a provisional approval may be terminated under the provisions of §§ 17.66 through 17.71 based on failure to meet the plan of correction or failure otherwise to meet the standards of § 17.63.

(Authority: 38 U.S.C. 1730)

[FR Doc. E9–28757 Filed 12–2–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0188; FRL–9086–7]

Approval and Promulgation of Air Quality Implementation Plans; California; Determination of Attainment of the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is determining that the Imperial County, California moderate 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 8-hour ozone NAAQS since the 2006–2008 monitoring period. In addition, quality controlled and quality assured ozone data for 2008 that are available in the EPA Air Quality System database, but not yet certified, show that this area continues to attain the 1997 8-hour ozone NAAQS. This determination suspends the requirements for California to submit an attainment demonstration, a reasonable further progress plan, contingency measures, and other planning State Implementation Plans for this area related to attainment of the 8-hour ozone NAAQS. These requirements shall remain suspended for so long as the area continues to attain the ozone NAAQS.

DATES: *Effective Date:* This rule is effective on January 4, 2010.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R09–OAR–2009–0188. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Office, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105–3901. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8 to 4:55, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office, U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone number (415) 947–4192, fax number (415) 947–3579, electronic mail *Tax.wienke@epa.gov.*

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

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I. What Action Is EPA Taking?
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I. What Action Is EPA Taking?

EPA is determining that the Imperial County, California moderate 8-hour ozone nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon certified ambient air monitoring data that show the area has monitored attainment of the 1997 ozone NAAQS since the 2006–2008 monitoring period. In addition, quality controlled and quality assured ozone data for 2009 that are available in the EPA Air Quality System (AQS) database, but not yet certified, show that this area continues to attain the ozone NAAQS.

Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the Notice of Proposed Rulemaking (NPR) published on September 23, 2009 (74 FR 48495) and will not be restated here. EPA received no public comments on the NPR.

II. What Is the Effect of This Action?

Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the requirements for the Imperial County, California moderate ozone nonattainment area to submit an attainment demonstration, a reasonable further progress plan, section 172(c)(9) contingency measures, and any other planning State Implementation Plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 ozone NAAQS.

This action does not constitute a redesignation to attainment under CAA section 107(d)(3), because the area does not have an approved maintenance plan as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The classification and designation status of the area remains moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

III. Final Action

EPA is determining that the Imperial County, California 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard and continues to attain the standard based on data through the 2009 ozone season. As provided in 40 CFR 51.918, this determination suspends the requirements for California to submit an attainment demonstration, a reasonable further progress plan, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 1997 8-hour ozone NAAQS for this area, for so long as the area continues to attain the standard.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data, and results in the suspension of certain Federal requirements. Accordingly, the Administrator 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.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, 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).

This rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). This action also does not have Federalism implications because it does 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 makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it determines that air quality in the affected area is meeting Federal standards.

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 because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

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

Under Executive Order 12898, EPA finds that this rule involves a determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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 May 19, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 52

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

Dated: November 13, 2009.

Laura Yoshii,

Acting Regional Administrator,

Region IX.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.282 is amended by adding paragraph (c) to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

* * * * *

(c) *Determination of attainment.* Effective January 4, 2010, EPA is determining that the Imperial County, California 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), this determination suspends the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act for as long as the area does not monitor any violations of the 8-hour ozone standard. If a violation of the 1997 ozone NAAQS is monitored in the Imperial County, California 8-hour ozone nonattainment area, this determination shall no longer apply.

[FR Doc. E9–28536 Filed 12–2–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket ID PHMSA–2007–27954; Amdt. Nos. 192–112 and 195–93]

RIN 2137–AE28

Pipeline Safety: Control Room Management/Human Factors

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the Federal pipeline safety regulations to address human factors and other aspects of control room management for pipelines where controllers use supervisory control and data acquisition (SCADA) systems. Under the final rule, affected pipeline operators must define the roles and responsibilities of controllers and provide controllers with the necessary information, training, and processes to fulfill these responsibilities. Operators must also implement methods to prevent controller fatigue. The final rule further requires operators to manage SCADA alarms, assure control room considerations are taken into account when changing pipeline equipment or configurations, and review reportable incidents or accidents to determine whether control room actions contributed to the event.

Hazardous liquid and gas pipelines are often monitored in a control room by controllers using computer-based equipment, such as a SCADA system, that records and displays operational information about the pipeline system, such as pressures, flow rates, and valve positions. Some SCADA systems are used by controllers to operate pipeline equipment, while, in other cases, controllers may dispatch other personnel to operate equipment in the field. These monitoring and control actions, whether via SCADA system commands or direction to field personnel, are a principal means of managing pipeline operation.

This rule improves opportunities to reduce risk through more effective control of pipelines. It further requires

the statutorily mandated human factors management. These regulations will enhance pipeline safety by coupling strengthened control room management with improved controller training and fatigue management.

DATES: *Effective Date:* The effective date of this final rule is February 1, 2010. *Compliance Date:* An operator must develop control room management procedures by August 1, 2011 and implement the procedures by February 1, 2012.

Incorporation by Reference Date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of February 1, 2010.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Byron Coy at (609) 989–2180 or by e-mail at *Byron.Coy@dot.gov.* For legal information contact: Benjamin Fred at (202) 366–4400 or by e-mail at *Benjamin.Fred@dot.gov.* All materials in the docket may be accessed electronically at *http://www.regulations.gov.* General information about PHMSA may be found at *http://phmsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Pipelines

Approximately two-thirds of our domestic energy supplies are transported by pipeline. There are roughly 170,000 miles of hazardous liquid pipelines, 295,000 miles of gas transmission pipelines, and 1.9 million miles of gas distribution pipelines in the United States. Hazardous liquid pipelines carry crude oil to refineries and refined products to locations where these products are consumed or stored for later use. Hazardous liquid pipelines also transport highly volatile liquids (HVLs), other hazardous liquids such as anhydrous ammonia, and carbon dioxide. The regulations in 49 CFR part 195 apply to owners and operators of pipelines used in the transportation of hazardous liquids and carbon dioxide. Throughout this document, the term ''hazardous liquid'' refers to all products in pipelines regulated under part 195. In addition, the term ''operator'' refers to both owners and operators of pipeline facilities.

Gas transmission pipelines typically carry natural gas over long distances from gas gathering, supply, or import facilities to localities where it is used to heat homes, generate electricity, and fuel industry. Gas distribution pipelines take natural gas from transmission pipelines and distribute it to residential, commercial, and industrial customers. The regulations in 49 CFR part 192 apply to operators of pipelines that transport natural gas, flammable gas, or gas which is toxic and corrosive. Throughout this document, the term ''gas'' refers to all gases in pipelines regulated under part 192.

B. Control Rooms and Controllers

Pipelines vary from small and simple to large and complex. Pipelines often span broad geographic areas. Gas distribution pipelines may cover entire metropolitan areas, literally street-by-street. Gas transmission and hazardous liquid pipelines may traverse hundreds or thousands of miles. Equipment exists throughout pipelines that must be operated to control the safe movement of commodity. This includes pumps and compressors to provide motive force and valves that control pressure or change position to direct the flow of commodity. In many cases, parameters measuring pipeline operations, such as pressure and flow, are monitored from remote, central locations referred to as control rooms. Pipeline equipment may also be operated remotely from control rooms. The employees who monitor pipeline parameters and direct certain actions from control rooms are known as controllers.

Most pipelines are underground and operate without disturbing the environment or negatively impacting public safety. However, accidents do occur occasionally. Effective control is one key component of accident prevention.[1] Controllers can help identify risks, prevent accidents, and minimize commodity loss if provided with the necessary tools and working environment. This rule will increase the likelihood that pipeline controllers have the necessary knowledge, skills, and abilities to help prevent accidents. The rule will also ensure that operators provide controllers with the necessary training, tools, procedures, management support, and environment where a controller's actions can be effective in helping to assure safe operation.

Most operators use computer-based SCADA systems, distributed control systems (DCS), or other less sophisticated systems to gather key information electronically from field locations.[2] These systems are configured to present field data to the controllers, and may include additional historical, trending, reporting, and alarm management information. Controllers track routine operations continuously and watch for developing abnormal operating or emergency conditions. A controller may take direct action through the SCADA system to operate equipment or the controller may alert and defer action to others.

Control rooms and controllers are critical to the safe operation of pipelines. Control rooms often serve as the hub or command center for decisions such as adjusting commodity flow or facilitating an operator's initial response to an emergency. The control room is the central location where humans or computers receive data from field sensors. Commands from the control room may be transmitted back to remotely controlled equipment. Field personnel also receive significant information from the control room. In essence, the control room is the ''brain'' of many pipeline systems.

Errors made in control rooms can have significant effects on the controlled systems. A controller's errors can initiate or exacerbate an accident. A controller's improper action or lack of action can place undue stresses on a pipeline, which could result in a subsequent failure, the loss of service, or an increase in lost commodity and risk to people, property, the environment, and the fuel supply. On the other hand, proper controller responses to developing abnormal operating conditions or accidents can alleviate the consequences of some events, or prevent them altogether, regardless of the initial cause.

C. Knowledge and Information Are Required To Do the Job

A controller must possess certain abilities, and attain the knowledge and skills necessary to complete the various tasks required for a specific pipeline system. To attain the necessary knowledge and skills, the controller is typically required to complete extensive on-the-job training and is often closely observed by an experienced controller for a period of time. The controller must also review and understand appropriate procedures, including those associated with emergency response, and repeatedly practice the correct responses to a variety of abnormal operating conditions. Pipeline operators periodically evaluate a controller's skills and knowledge through the regulatory-

[1] The pipeline safety regulations in 49 CFR parts 191, 192, and 193 refer to certain events on a gas pipeline system as ''incidents'' while part 195 refers to similar failures on a hazardous liquid pipeline system as ''accidents.'' Throughout this document the terms ''accident'' and ''incident'' may be used interchangeably to mean an event or failure on a gas or hazardous liquid pipeline.

[2] SCADA, DCS or other similar systems perform similar functions. Throughout this document, where the term SCADA is used, it should be interpreted to mean SCADA, DCS or other similar systems.

required operator qualification (OQ) process.

Pipeline controllers must have adequate and up-to-date information about the conditions and operating status of the equipment they monitor and control if they are to succeed in maintaining pipeline safety. Incorrect, delayed, missing, or poorly displayed data may confuse a controller and lead to problems despite the extensive training, qualification, and abilities of the controller. SCADA systems perform the function of gathering this information and displaying it to the controller. Operators need to assure that SCADA systems perform this important function correctly, and that the information is displayed in a manner that facilitates controller understanding and recognition of abnormal operating conditions.

D. Control Room Management

All of this must occur within an environment that facilitates appropriate and correct actions. Operators must prudently manage the factors affecting the controller. This includes relevant human factors, such as factors that can affect controller fatigue, and operator processes and procedures for managing the pipeline from the control room. PHMSA refers to the combination of all these factors as control room management. This rule requires that operators take specific actions to assure that pipeline control room management contributes to the safe operation of pipeline facilities.

E. NPRM

On September 12, 2008, PHMSA published a notice of proposed rulemaking (NPRM) (73 FR 53076) proposing to require operators of hazardous liquid pipelines, gas pipelines, and liquefied natural gas (LNG) facilities to amend their existing written operations and maintenance procedures, OQ programs, and emergency plans to assure controllers and control room management practices and procedures are adequate to maintain pipeline safety and integrity. In summary, the NPRM proposed to revise the Federal pipeline safety regulations by:

(1) Requiring operators to amend their Operations and Maintenance Manuals to address the human factors management plan required by the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act (Pub. L. 109–468), Section 12).

(2) Defining the terms alarm, controller, control room, and SCADA.

(3) Requiring operators to define roles and responsibilities so that management and controllers have uniform expectations and understandings about response requirements before an abnormal operating condition or emergency arises.

(4) Requiring operators to establish procedures to facilitate controllers receiving management input in a timely manner when required.

(5) Requiring operators to assure that controllers receive the timely and necessary information they need to fulfill their responsibilities.

(6) Requiring operators to conduct an initial point-to-point baseline verification for each SCADA system to validate and document that field equipment configurations agree with computer displays.

(7) Requiring operators to record critical information during each shift.

(8) Requiring operators to include in their written procedures a limit on the length of time a controller may work and a requirement to allow time for adequate rest between shifts.

(9) Requiring two levels of alarm management review.

(10) Requiring operators to establish thorough and frequent communication between controllers, management, and field personnel when planning and implementing changes to pipeline equipment and configuration.

(11) Requiring operators to review all reportable accidents and incidents and certain other events on a routine basis to identify and correct deficiencies related to: Controller fatigue; field equipment; procedures; SCADA system configuration and performance; and training.

(12) Requiring operators to include certain content in their controller training programs. The proposed rule included a minimum set of elements that would overlap and supplement existing OQ programs.

(13) Requiring additional controller qualifications to measure or verify a controller's performance, including the prompt detection of, and appropriate response to, abnormal and emergency conditions likely to occur.

(14) Mandating that a senior executive officer validate certain aspects of controller training, qualification, and compliance with the requirements of this rule.

(15) Requiring operators to maintain records that demonstrate compliance with the regulation and to document any deviations from their control room management procedures.

The intent of the NPRM was to ensure that pipeline controllers would have the necessary knowledge, skills, abilities, and qualifications to help prevent accidents. The proposal was also intended to assure that operators would provide controllers with accurate information and the training, tools, procedures, management support, and operating environment where a controller's actions can help prevent accidents and minimize commodity losses. The requirements proposed in the NPRM were based on a controller study conducted by PHMSA that had identified areas for enhancement, an NTSB SCADA safety study, and certain mandates in the PIPES Act.

F. PHMSA Controller Study

As detailed in the NPRM, PHMSA had been studying and evaluating control room operations for many years and began developing control room inspection guidance in 1999. Congress subsequently enacted the Pipeline Safety Improvement Act of 2002 (PSIA) (Pub. L. 107–355), which required a pilot program be conducted to evaluate the need for pipeline controllers to be certified through tests and other requirements. In response to the PSIA, PHMSA conducted the Controller Certification (CCERT) project study and reported its findings to Congress within a report dated December 17, 2006, entitled ''Qualification of Pipeline Personnel.'' This project included a comprehensive review of existing controller training, qualification processes, procedures, and practices. This review also included identifying potential enhancements to controller qualifications and control room operations, such as validation and certification processes currently used in other industries to enhance public safety. Additional information on the CCERT study may be found in the NPRM.

G. NTSB SCADA Study

The NTSB conducted a safety study on hazardous liquid pipeline SCADA systems during the same period PHMSA conducted its CCERT study. While the PHMSA project addressed a wider perspective of interest, the two studies include similar findings.[3] The NTSB study identified areas for potential improvement, which resulted in five recommendations. Three are incorporated in this final rule. PHMSA is addressing the other two recommendations independent of this rulemaking.

The impetus of the NTSB study was a number of hazardous liquid accidents investigated by the NTSB in which there was a delay between the initial

[3] *See* ''Supervisory Control and Data Acquisition (SCADA) Systems in Liquid Pipelines,'' Safety Study NTSB/SS–05–02, adopted November 29, 2005.

indications of a leak evident on the SCADA system and the controller's initiation of response efforts. The NTSB designed its SCADA study to examine how hazardous liquid pipeline companies use SCADA systems to monitor and record operating data and to evaluate the role of SCADA systems in leak detection. The study identified five areas for potential improvement:

- Display graphics.
- Alarm management.
- Controller training.
- Controller fatigue data collection.
- Leak detection systems.

While the NTSB SCADA study specifically addressed hazardous liquid pipelines, the report included an appendix of all NTSB SCADA-related recommendations since 1976, which resulted from investigations of both hazardous liquid and gas pipeline accidents. Since 1976, the NTSB has issued approximately 30 recommendations to various entities related to SCADA systems involving both hazardous liquid and gas pipeline systems. PHMSA considers the NTSB recommendations in the most-recent SCADA safety study to be applicable for both gas and hazardous liquid pipelines. The recommendations being addressed through this rulemaking are as follows:

NTSB Recommendation P–05–1

Operators of hazardous liquid pipelines should be required to follow the API Recommended Practice 1165 (API RP 1165) for the use of graphics on the SCADA screens.

NTSB Recommendation P–05–2

PHMSA should require pipeline companies to have a policy for the review and audit of SCADA-based alarms.

NTSB Recommendation P–05–3

Operators should be required to include simulator or non-computerized simulations for training controllers in recognition of abnormal operating conditions, in particular leak events.

H. PIPES Act of 2006

The PIPES Act introduced additional requirements for PHMSA with respect to control room management and human factors. Section 12 of the PIPES Act (codified at 49 U.S.C. 60137) requires PHMSA to issue regulations requiring each operator of a gas or hazardous liquid pipeline to develop, implement, and submit a human factors management plan designed to reduce risks associated with human factors, including fatigue, in each control room for the pipeline. The plan must include, among other things, a maximum limit on the hours of service for controllers working in a control room. PHMSA, or a state authorized to exercise safety oversight, is required to review and approve operators' human factors plans, and operators are required to notify PHMSA (or the appropriate state) of any deviations from the plan. Section 19 of the PIPES Act requires PHMSA to issue standards to implement the three recommendations of the NTSB SCADA safety study described above. This final rule fulfills requirements in sections 12 and 19 of the PIPES Act.

II. Summary of Public Comments

PHMSA received a total of 144 comments on the NPRM, including comments from trade associations, municipal operators, local distribution companies (LDC), NTSB, LNG facilities, gas transmission pipeline operators, other gas distribution pipeline operators, hazardous liquid pipeline operators, state regulators, and private citizens. In addition, PHMSA participated in two trade association meetings during the public comment period: (1) On October 14–15, 2008, at the American Petroleum Institute (API) and Association of Oil Pipelines (AOPL) forum for control room management in Houston, Texas; and (2) on October 30, 2008, at the American Gas Association (AGA) control room management workshop in Ashburn, Virginia. Summaries of PHMSA's interactions at these meetings are available in the docket. Subsequent to the public comment period, on February 12, 2009, PHMSA staff met with NTSB staff in Washington, DC to discuss NTSB's comments on fatigue mitigation. A summary of this meeting is also in the docket.

The national pipeline trade associations, consisting of the AGA, the American Public Gas Association (APGA), the API, the AOPL, and the Interstate Natural Gas Association of America (INGAA), submitted a joint comment on October 8, 2008, shortly after the NPRM was issued, suggesting the agency withdraw the proposed rule. The associations contended that the proposed rule was overly-broad, unduly burdensome, and exceeded what the associations saw as the intent of Congress. They proposed that PHMSA issue an amended proposed rule with a clear scope and revised definitions that would reflect congressional intent and input from previous public meetings, and that would incorporate available consensus standards to a greater degree.

The trade associations submitted a second letter on November 12, 2008, reaffirming their previous suggestion that the proposed rule be reissued. The second joint letter provided alternative rule language to support the associations' suggested re-issuance of the proposed rule. The letter also suggested that PHMSA provide its pipeline safety advisory committees the opportunity to vote on their suggested alternative language at a joint committee meeting scheduled for December 2008.

AGA, APGA, INGAA, and API/AOPL also individually submitted comments on the proposed rule. Other associations that submitted comments were: The National Association of Pipeline Safety Representatives (NAPSR), Northeast Gas Association (NGA), Texas Energy Coalition (TEC), Texas Oil and Gas Association (TXOGA), and Texas Pipeline Association (TPA). NGA supported AGA's comments and TEC, TXOGA, and TPA supported the joint trade associations' comments and the associated alternative regulatory language. APGA stated that the rule as written would have a disproportionately greater impact on small utilities with no offsetting benefits based on its survey that found, on average, 22 percent of small public gas system employees would be classified as controllers subject to this rule. APGA noted that the agency's Regulatory Impact Analysis (RIA) did not address adequately the impact on small entities.

NAPSR is an organization of state agency pipeline safety managers responsible for the administration of their state's pipeline safety programs. NAPSR expressed concerns about jurisdictional authority in situations where a pipeline crosses State boundaries while under the control of a control room, or where a pipeline connects to a dispatch center or communications center in another State. NAPSR proposed adopting the definitions of control room and controller in API Recommended Practice 1168 (API RP 1168) to resolve the issue of jurisdictional authority.

Comments from individual pipeline operators generally echoed the comments of the joint trade associations and the individual trade associations. Their comments mainly addressed the scope of the proposed rule. Many of these commenters were concerned with the proposed definitions of ''controller'' and ''control room,'' contending that these definitions would have the effect of making the proposed rule's scope unreasonably broad. Another area of significant concern was the proposed requirement to conduct a 100 percent baseline data point verification of SCADA systems. Pipeline operators generally commented that this proposed requirement would entail significant cost for very limited benefit. The

pipeline operators all supported the alternative regulatory language submitted by the joint trade associations or their own trade association.

III. Advisory Committees Meeting

On December 11, 2008, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) met jointly for their bi-annual public meeting in Arlington, Virginia.[4] This meeting included consideration of the proposed control room management rule. As described above, the joint trade associations had submitted comments suggesting that the proposal be withdrawn and that the rule be significantly revised before being reissued. The associations submitted proposed alternative rule language as a basis for revision and had asked that the advisory committees be afforded the opportunity to consider their revised language if PHMSA did not withdraw the proposed rule.

Based on the comments filed by the joint trade associations, those received during the public meetings described above, and the general trend of other comments, PHMSA presented the Advisory Committees with three variations of the regulatory language being considered by the Agency. These included the language proposed in the NPRM, the alternative language proposed by the joint trade associations, and a third option that reflected the trade associations' proposed language with modifications to reflect critical NPRM language and other comments that had been received. PHMSA provided these variations of the regulatory language to facilitate the Advisory Committee members' discussion of the rule and to provide a process by which the members could recommend a certain course of action by PHMSA with regard to the rule. Although PHMSA had not selected any particular course of action at that time, PHMSA expressed its view that the third option might be the most viable alternative.

The TPSSC discussed exempting gas distribution from all requirements of this rulemaking action. After substantial discussion, the TPSSC voted against recommending that PHMSA exclude distribution from the rule, but voted in favor of recommending that PHMSA limit the requirements placed on certain small distribution operators to fatigue management and associated recordkeeping issues.

The Advisory Committees provided additional substantive and editorial comments to the proposed definitions, the scope of part 192, general requirements, requirements concerning SCADA systems, verification, backup control, fatigue mitigation, alarm management, change management, operating experience, and training requirements. Also, members of the public were afforded an opportunity to comment during the meeting, and several participants from the public provided their viewpoints for the record. After further discussion among the members, the TPSSC voted twelve to one, and the THLPSSC voted unanimously in favor. Also, both Advisory Committees provided a recommendation for PHMSA to make the changes noted during discussion. A transcript of the Advisory Committees meeting is posted in the docket (PHMSA–2007–27954–0184.2).

The Advisory Committees recommended the following changes to the rule language proposed in the NPRM:

- Changing the definitions of controller and control room to limit the scope of the rule. The revised definitions would exclude field personnel who operate equipment and operator personnel who use SCADA information but who have no operational responsibility to respond to SCADA indications.
- Adding a scope statement to explicitly limit the application of the rule to controllers using SCADA systems.
- Excluding gas distribution pipelines serving less than 250,000 customers or gas transmission pipelines without compressor stations from many of the requirements.
- Reducing specificity in the elements operators would be required to define as controllers' roles and responsibilities.
- Limiting applicability of SCADA display guidance in API RP 1165 to SCADA systems that would be installed or undergo certain changes after the rule became effective.
- Requiring point-to-point verification of SCADA only when new field equipment is installed or when changes are made to field equipment or displays that could affect pipeline safety.
- Eliminating requirements to implement additional measures to monitor for fatigue when only a single controller is on duty.
- Reducing the scope and frequency of required alarm reviews.
- Eliminating the proposed requirement that operators review for lessons learned pipeline events that did not require reporting as incidents and focusing required reviews of incidents on those events where there is reason to believe that control room actions contributed to the event.
- Deferring to existing requirements for operator qualification rather than imposing an additional qualification requirement for controllers.
- Eliminating the proposed requirement that a senior officer of each pipeline company submit certification that the requirements of the rule have been implemented.

Our changes to the final rule in response to the comments and advisory committees' recommendations are discussed below in section V.

IV. Summary of Final Rule

This final rule imposes requirements for control room management for all gas and hazardous liquid pipelines subject to parts 192 and 195 respectively that use SCADA systems and have at least one controller and control room. The scope of the rule is narrower in several respects than was proposed in the NPRM. First, for the reasons set forth below, LNG facilities are not covered by the rule, and no new requirements are adopted for part 193. In addition, changes to the proposed definition of a controller focus the new requirements on persons who work in control rooms and use SCADA systems to control their pipelines. The scope of the final rule has also been revised for gas pipeline operators such that each control room whose operations are limited to either or both of distribution with fewer than 250,000 customers or gas transmission without compressor stations must follow procedures with appropriate documentation that implement only the requirements for fatigue management, validation, and compliance and deviations. Pipelines meeting these criteria are generally smaller and simpler. They pose less complexity, obviating the need for the other requirements in this rule.

This rule requires pipeline operators to have and follow written control room management procedures. The operators must define the roles and responsibilities of controllers in normal, abnormal, and emergency operating

[4] The TPSSC and THLPSSC are statutorily-mandated advisory committees that advise PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas pipelines and for hazardous liquid pipelines. Both committees were established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and the pipeline safety law (49 U.S.C. Chap. 601). Each committee consists of 15 members—with membership evenly divided among the Federal and State government, the regulated industry, and the public. The committees advise PHMSA on technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

situations. The final rule does not enumerate specific responsibilities that must be defined, as did the proposed rule. Instead, the final rule leaves the scope of controller responsibilities to be defined by each pipeline operator taking into consideration the characteristics of its pipeline and its methods of safely managing pipeline operation.

Pipeline operators will be required by this final rule to assure that new SCADA displays and displays for SCADA systems that are expanded or replaced meet the provisions of the consensus standard governing such displays, API RP 1165. Displays for gas pipelines are required to meet only some provisions of the standard. The proposed rule would not have limited applicability of this requirement to new or modified SCADA systems. Operators will be required to validate the accuracy of SCADA displays whenever field equipment is added or moved and when other changes that may affect pipeline safety are made to field equipment or SCADA displays. The proposed rule would have required that all operators perform a 100 percent verification of existing SCADA systems within a few years. This provision was not included in the final rule. Pipeline operators will also be required to test any backup SCADA systems and to test and verify a means to manually operate the pipeline (in the event of a SCADA failure) at least annually.

Pipeline operators must also establish a means of recording shift changes and other situations in which responsibility for pipeline operations is handed over from one controller to another. Such changes in responsibility may occur at scheduled shift changes or within a shift, when a controller is relieved for breaks and other reasons. Handovers can also occur between control rooms, for example where only one of multiple control rooms is used during night shifts. Pipeline operators will need to define procedures for shift changes and other circumstances in which responsibility for pipeline operation is transferred from one controller to another. The procedures must include the content of information to be exchanged during the turnover.

Pipeline operators must implement measures to prevent fatigue that could influence a controller's ability to perform as needed. Operators will need to schedule their shifts in a manner that allows each controller enough off-duty time to achieve eight hours of continuous sleep. Operators must train controllers and their supervisors to recognize the effects of fatigue and in fatigue mitigation strategies. Finally, each operator's procedures must establish a maximum limit on the number of hours that a controller can work. PHMSA recognizes there may be infrequent emergencies during which an operator may find the need to deviate from the maximum limit it has established to ensure adequate coverage in the control room for emergency response. Accordingly, the regulation provides that an operator's procedures may provide for the deviation from the maximum limit in the case of an emergency. Such a deviation would only be permitted if necessary for the safe operation of the pipeline facility. PHMSA or the head of the appropriate State agency, as the case may be, may review the reasonableness of any deviation from an operator's maximum limit on hours of service when considering whether to take enforcement action.

All pipeline operators are subject to the fatigue management requirement, even those whose operations do not involve multiple shifts. Controller fatigue can affect even single-shift pipeline operations and the PIPES Act requires that all pipeline operators have a plan that addresses fatigue. PHMSA expects that small operators, many of which operate only a single shift, will be able to meet these requirements with little effort. Shift schedule rotation is not an issue for these operators and written instructional material (e.g., pamphlets) that can be reviewed during scheduled training may be sufficient to address the education and training requirements for such small operators.

SCADA alarms are a key tool for managing pipeline operations, but excessive numbers of alarms can overwhelm controllers. This final rule will require pipeline operators to develop written alarm management plans. These plans must include monthly reviews of data points that have been taken off scan or have had forced or manual values for extended periods. Operators will also need to verify correct alarm set-points, eliminate erroneous alarms, and review their alarm management plans at least annually. Proposed requirements for weekly reviews of issues related to alarm management and specified elements to include in annual reviews were not incorporated in the final rule. Some elements that would have been included in those weekly reviews, particularly ''nuisance alarms,'' have been generalized to points that have had alarms inhibited (which would likely result if nuisance alarms occur) or which have generated false alarms, both of which are now required to be included in monthly reviews. Operators will also be required to monitor the content and volume of activity being directed to their controllers (including alarms and actions directed to controllers from sources other than the SCADA system) at least annually.

Pipeline operators will be required to consider the effects of future changes to the pipeline on control room operations. They must involve controllers, controller representatives, or their management in planning prior to implementing significant hydraulic or configuration changes that could affect control room operations. This participation must be accomplished with enough time prior to the implementation to allow adequate training, procedure development and review by the affected controllers. Operators must also assure good communications when field personnel are implementing physical changes to pipeline equipment or configuration. Proposed requirements to track SCADA maintenance, coordinate SCADA changes in advance, and consider effects on control rooms in merger and acquisition plans have not been incorporated.

Mergers and acquisitions are events that can introduce changes of importance to controllers. Acquired assets are often added to existing SCADA systems, or divested assets are removed. Other changes in operating practices may occur as a result of management changes associated with a merger. The proposed rule would have required that merger, acquisition, and divestiture plans be developed and used to establish and conduct controller training and qualification prior to the implementation of any changes to the controller's responsibilities. A unique section regarding merger, acquisition, and divestiture plans for the control room has not been included in the final rule, because these types of plans frequently include many elements that do not affect control rooms and controllers. Nevertheless, PHMSA considers that operators should take into account potential implications on control rooms during such events. Other requirements of this rule address many of the important factors affecting control room operations and controllers in a merger, acquisition, or divestiture. For example, operators will be required to consider additional alarms added to a controller station to determine whether they could create a ''flood'' that would potentially overwhelm the controller. PHMSA expects that operators would also consider alarm descriptors and prioritization if changes are made to a controller console. Changes to SCADA systems to incorporate new (or delete old) assets would trigger requirements

for display point validation and display design (i.e., required elements of API RP 1165). PHMSA thus considers that important changes associated with mergers, acquisitions, and divestitures are still addressed within this rule even though the proposed explicit requirement to address them in plans for these events has not been included.

Pipeline operators will be required to review their operating experience to identify lessons that might improve control room management. Specifically, operators will be required to review any reportable event and determine if control room actions contributed to the event. This is more focused than the proposed requirement that operators review all reported incidents. Operators must identify, from these reviews, aspects of the event that may reflect on controller fatigue, field equipment, operation of any relief device, procedures, SCADA system configuration, and SCADA system performance. Operators must include lessons learned in controller training programs. The proposed rule requirement for operators to review ''near misses'' or events that did not meet criteria for reporting was not adopted in this rulemaking action, but such reviews are certainly encouraged.

Pipeline operators will be required to have formal training programs including computer-based or non-computer (e.g., tabletop) simulations to train controllers to recognize and deal with abnormal events. The training must also provide controllers with a working knowledge of the pipeline system, particularly as it may affect the progression of abnormal events, and their communication responsibilities under the operator's emergency response plans. Proposed requirements that training include site-specific failure modes of equipment and site visits to a representative sample of field installations similar to those for which a controller is responsible were not adopted.

Operators must, upon request of pipeline safety regulators, submit their completed control room management programs to the regulator for review. This replaces the proposed requirement that executives of pipeline operating companies submit to regulators annually a signed validation that: Controller training has been reviewed, only qualified controllers have been allowed to operate the pipeline, and the company continues to seek ways to improve control room operations. A request to review the plan will usually be in the course of a regulatory inspection where the adequacy of control room management plans and training will be reviewed, as will the operator's compliance with each of the above-referenced requirements.

The proposed requirements related to a qualification program for controllers were not adopted. Controllers are still subject to existing requirements for operator qualification, which address similar subjects.

V. Response to the Comments

The responses to comments in this section reflect PHMSA's consideration of the Advisory Committees' recommendations as well as the individual comments in the docket. A review of all submitted comments shows that the comments submitted by trade associations (API, AOPL, INGAA, AGA, and APGA), jointly and individually, address the comments of almost all pipeline operators. Some comments were on the preamble to the proposed rule. These comments will not be responded to unless they are relevant to this rulemaking action. Comments that were beyond the scope of this rulemaking action are not being addressed.

A. Liquefied Natural Gas (LNG) Facilities

The joint trade associations; the Iowa Utilities Board; 11 LNG facility and gas pipeline operators; AGA; APGA; and one individual opposed addition of requirements into 49 CFR part 193 addressing LNG facilities.

AGA and the LNG facility operators stated that the LNG facilities should not be included in the final rule because: (1) It was not the intent of Congress or the NTSB to include LNG in this regulation; (2) Congress expressly limited the CCERT study in the Pipeline Safety Act of 2002 to three pipeline facilities; (3) LNG facilities were not to be included in the pilot study; (4) LNG facilities are operated as plant sites with local control rooms; (5) Almost all of the text in the proposed amendments to 49 CFR part 193 is copied verbatim from the language for gas and hazardous liquid pipelines, but many of the requirements that are logical for pipelines make no sense in operating LNG plants; (6) The agency's own Regulatory Impact Analysis (RIA) study of the proposed rule clearly demonstrates no benefit that would offset the cost of including LNG facilities in the NPRM; (7) LNG facilities are regulated by 49 CFR part 193 and NFPA 59A, as incorporated by reference; and (8) The very detailed proposed control room rule creates confusion when added to the existing regulations. AGA and the joint trade associations suggested that PHMSA should initiate a separate rulemaking action focused on issues relevant to LNG facilities if it concludes that control room management requirements are needed for these facilities.

Agency response—PHMSA agrees that the PIPES Act requirement regarding control room management does not explicitly refer to LNG facilities, nor are such facilities referenced in the PSIA legislation with regard to the controller certification pilot study. Similarly, NTSB did not address LNG facilities in its SCADA safety study and related recommendations. At the same time, neither Congress nor NTSB explicitly stated that control room management requirements should not be included for LNG facilities. Given the broad authority of PHMSA to regulate pipeline safety, including the safety of LNG facilities, the silence of the PIPES Act and the NTSB safety study with respect to LNG is not, by itself, a compelling reason why these facilities should be excluded from this rulemaking. However, through further review and consideration of the comments, PHMSA has determined that LNG should not be included in this rulemaking action at this time.

After considering the comments and re-evaluating the basis for applying the same requirements to part 193 for LNG facilities, PHMSA is persuaded that there are several reasons why we should not have used the same requirements. LNG facilities are different from pipelines. As pointed out by commenters, LNG facilities exist on a single site, rather than dispersed over hundreds or thousands of miles, and LNG controllers thus have different knowledge of and working responsibilities for facility equipment. LNG controllers can, and do, walk to ''field'' equipment within minutes to monitor its condition or take local operating actions, whereas pipeline controllers may ''interact'' with field equipment only via their SCADA systems. Because they operate equipment locally, LNG controllers have better operational knowledge of the equipment in their facilities, including its possible failure modes, than do most pipeline controllers. All of these differences diminish the value in improved safety that would result from implementing the proposed requirements at LNG facilities.

In addition, the regulations in part 193 do not parallel precisely those in the other parts. For example, part 193 includes specific requirements applicable to control centers [5] (49 CFR 193.2441) that were not in parts 192 or

[5] Control centers is the term used in part 193 to refer to what are called control rooms in this document.

195 prior to this rulemaking. This could create some degree of overlap, and potential confusion, if the requirements included in this final rule for Parts 192 and 195 were also incorporated into part 193. PHMSA thus has not included requirements for part 193 in this final rule.

B. Scope of the Rule and Related Definitions

AGA stated that the proposed definitions of controller and control room had the effect of unreasonably expanding the scope of all rule sections. AGA stated that the proposed rule would regulate local, remote or field control rooms, panels and devices, but noted that local, remote or field control rooms are usually hardwired instead of operated via long-distance communications through SCADA. Because a controller or a technician can address problems and concerns with a few minutes' walk in these facilities, AGA contended local control rooms do not need the complicated procedures placed in this proposed rule.

Other commenters agreed that the proposed definitions of ''controller'' and ''control room'' were unreasonably broad and that they led to a scope that was broader than necessary. The Iowa Utilities Board (Iowa) stated that by defining a controller as someone who monitors ''or'' controls, instead of monitors ''and'' controls, the scope of the rule would unreasonably expand to include any facility with a pressure gauge, and any person who checks the pressure gauge. The joint trade associations' alternative regulatory language included revisions to definitions. Their alternate definitions for ''controller'' and ''control room'' are based on API RP 1168. API and AOPL also stated that the NPRM definitions for ''controller'' and ''control room'' are too broad. They recommended the agency adopt the API RP 1168 definitions for ''controller'' and ''control room'' as proposed in the joint trade associations' alternate language. Iowa agreed that the definition of controller and control room should be based on the definitions in API RP 1168. Iowa also suggested that the agency adopt the alternative regulatory language proposed by the trade associations. NAPSR proposed adopting the API RP 1168 control room and controller definitions to resolve the issue of jurisdictional authority for pipelines crossing state lines. The Missouri Public Service Commission (PSC) stated that it supports and concurs with the comments submitted by NAPSR. PSC also believes that the definitions of ''control room'' and ''controller'' noted in the NAPSR comments should be adopted in the rulemaking. All individual gas and hazardous liquids pipeline operators expressed similar concerns with the proposed rule definitions of ''controller'' and ''control room.''

INGAA stated that the proposed regulations far exceed what Congress intended regarding the range of subjects covered, the range of facilities covered and the range of employees covered.

The joint trade associations stated that the proposed rule had no scope statement to provide guidance regarding the application of the proposed rule. API and AOPL stated that the scope of the NPRM exceeds the intent of Congress. Individual pipeline operators echoed the comments of the joint trade associations and the individual trade associations. Many of the comment submitters are, like AGA, concerned with broad definitions of ''controller'' and ''control room.'' Also, some individuals commented that the scope of the proposed rule is too broad.

APGA stated that the proposed rule should be re-written to be limited to true pipeline controllers and made reasonable for those operators. APGA noted that many small gas distribution pipeline operators, including many of its members, do not have control rooms and controllers in the same sense as do larger pipeline operators.

Agency response—PHMSA agrees that the proposed definitions of ''controller'' and ''control room'' had a rather pervasive effect on the scope of the requirements in the rule. In particular, PHMSA agrees with the Iowa Utilities Board that the proposed language could have been read to include personnel who monitor a pressure gauge (or other instrument) but have no authority or responsibility for pipeline operation. This result was unintended. PHMSA did not intend these requirements to apply to persons who may use SCADA information for non-operational reasons, but rather to persons with operational duties and responsibilities that involve use of SCADA and who thus can directly effect on pipeline safety. PHMSA has made changes in the definitions in the final rule to clarify this intent.

The inclusion of field control rooms and local control panels, however, was intended. The proposed rule was intended to apply to these control operations, in situations in which the person performing local control actions could not actually see the effect of those actions, based on the premise that the cognitive issues related to use of local computer-based controls were similar to those associated with use of SCADA in remote control rooms. PHMSA is persuaded by its review of the public comments that while cognitive issues may be similar, the potential effect on safety that could result from use of local computer-based controls are much less. As a result, PHMSA has modified the final rule to remove explicit requirements that local control panels be included in the actions required by this rule. Local control panels and field control rooms will only be included if they meet the definitions included in this rule, i.e., if they can have an effect on pipeline safety similar to that of a non-local control room.

By revising the definition of control room in response to the comments, the agency has also limited the scope to control rooms with SCADA systems. In addition, the wording in the proposed definition is changed from ''monitoring or controlling'' to ''monitoring and controlling.'' It should be noted that a control room whose SCADA system is used only to monitor incoming data is still included in the requirements of the rule if the controllers otherwise act to ''control'' the pipeline. Some control rooms have only monitoring capability in their SCADA system, but they achieve control through controllers responding to incoming data by other means such as by contacting field personnel and directing them to take action when necessary. If controllers prompt others to action (or perform those control action themselves) they are considered to ''control'' the pipeline. Therefore, the change from ''or'' to ''and'' does not exclude monitor-only control rooms from the scope of this rulemaking action. The change from ''or'' to ''and'' principally excludes individuals who may access and monitor SCADA system data for non-controller, incidental reasons, such as maintenance planning, equipment efficiency, or business logistics purposes. These persons cannot directly affect pipeline safety, because they are unable to use the SCADA system to take any controller actions.

With respect to the definition of controller, the agency similarly narrowed the scope to eliminate persons who only use SCADA data incidentally and thus cannot directly affect pipeline safety. The definition now includes only those persons who monitor SCADA data from a control room and have ''operational authority and accountability for the remote operational functions of the pipeline facility as defined by the pipeline operator.'' As in the case of ''control room,'' the definition of ''controller'' has been modified from ''monitor or control'' to ''monitor and control.'' If a

SCADA system is designed and used in a control room only for monitoring purposes, and the individual contacts other personnel to initiate corrective actions after monitoring the SCADA system, that person is considered a controller.

PHMSA considers that these changes to the definitions of ''control room'' and ''controller'' limit the scope of the proposed rule to those persons and operating centers that can directly affect pipeline safety. Most importantly, they eliminate the unintended apparent inclusion of certain employees who use SCADA data only incidentally. PHMSA considers that the revised definitions still encompass the majority of employees and control centers that were intended as the focus of this rulemaking. The changes in definitions address most, but not all comments concerning scope.

PHMSA has revised the final rule to include a statement of scope to clarify that it applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. PHMSA has also revised the rule to exclude operators of some smaller gas pipeline systems from many of the rule's provisions. Specifically, gas distribution operators with less than 250,000 services and gas transmission operators without compressor stations are required only to comply with the provisions related to fatigue mitigation, validation, and compliance and deviation. These small and simple pipelines require far less controller action, obviating the need for the other provisions. There are often few or no actions that controllers of small distribution systems can take remotely. These systems operate at low pressures, providing significant time to identify and respond to unusual situations before any safety problem could result. Similarly, there are few actions that a controller of a transmission pipeline that does not include compressor stations can take to adversely affect safety. Most such pipelines are short. They often are the gas supply for local distribution companies, and are operated as an integral part of their distribution pipelines. They meet the definition of transmission pipelines because they operate above 20 percent SMYS or serve one of the functions included in the definition in section 192.3, but they represent a much smaller potential for safety issues. It should be noted, however, that this limited exclusion applies only if the operations from a gas operator's control room are limited to such smaller operations. The full requirements of the rule apply to operators of such pipelines if the operator also operates other pipelines outside of this limited exclusion from the same control room. For example, there may be large gas transmission operators who also operate small distribution pipelines or large LDCs that also have or operate transmission without compressors. In such cases, all the provisions of this rule apply to all of the operator's pipeline operations from a common control room.

C. Other Definitions

The joint trade associations proposed changes to the definition of SCADA systems. The proposed rule would have defined these as ''a computer-based system that gathers field data, provides a structured view of pipeline system or facility operations, and may provide a means to control pipeline operations.'' This definition would have encompassed computer-based control systems in the field. The trade associations proposed that this definition be limited to systems used by controllers in the control room. This change is related to the concern over scope and the definition of ''controller'' and ''control room'' described above. The joint trade associations would also focus the definition of ''alarm'' on safety-related parameters, omitting reference to indications that operational parameters not related to safety are outside expected conditions.

INGAA stated that the definition of ''alarm'' is not required or even contemplated by Congress for gas transmission pipelines and, therefore, should be deleted. On the definition of SCADA system, INGAA recommended that the agency adopt the definition provided by the joint trade associations.

Agency response—Alarm management is a significant factor in control room management and is thus included in this rule. Excessive numbers of alarms or alarms that are inaccurate or not prioritized can overwhelm a controller, resulting in a failure to take appropriate action. Assuring appropriate management of control room alarms requires that the alarms of concern be defined. At the same time, PHMSA understands the industry's concern that SCADA systems are used to alarm many parameters that do not affect safety and that response to these parameters is outside what should be PHMSA's concern. Accordingly, PHMSA has revised the definition in the final rule to reflect that alarms of concern are those providing either or both audible and visible indications to controllers that equipment or processes are outside operator-defined, safety-related parameters. However, the final rule will require that operators monitor the content and volume of activity being directed to each controller.

The final rule defines SCADA systems as a computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline. This excludes local computer-based control stations for the reasons described above. Also as discussed above, control may be exercised by a controller notifying other personnel to take action. Control may also be accomplished through SCADA commands. The key factor is that the system provides information that allows control to occur, and systems that cannot send commands to operate pipeline equipment may thus still be SCADA systems under this definition.

D. Regulatory Analysis

The joint trade associations stated that the preamble statement vastly underestimates the cost of the proposed regulations. They stated that the proposed rule would cost more than $100 million annually and that the preliminary regulatory analyses should have concluded that this was an economically significant rule under section 3(f)(1) of Executive Order 12866 (58 FR 51735; October 4, 1993) and DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). Also, they stated that the proposed rule has a significant regulatory impact within the meaning of 5 U.S.C. 601 *et seq.* They contended the proposed rule is contrary to the Unfunded Mandates Reform Act of 1995 because a large portion of gas distribution systems are owned and operated by municipalities and local governments. In addition, the associations maintained that the proposed rule would impose substantial costs to state and local governments contrary to Executive Order 13132.

AGA stated that its review of the proposed rule shows obvious errors in the analysis. AGA stated that it obtained rough estimates from some of its LDC members that show the proposed rule to be not cost beneficial on a national basis, and that it will exceed the $100 million in annual costs threshold of a significant rule. AGA stated that a comparison of implementation costs between the proposed rule and that of the alternative regulatory language proposed by the joint trade associations shows the costs of the alternative regulatory language are approximately

14 to 15 percent of the costs of the proposed rule.

INGAA stated that the benefits of the proposed rule for the gas transmission companies are unworthy of a rulemaking compared to the expected annual costs for the next 10 years of nearly $140,000,000.[6] INGAA contends a handful of anecdotal data from an appendix to an unrelated study, some answers to hypothetical questions about theoretical possibilities and a series of assumptions with no foundation in the record do not constitute a legally defensible foundation for imposing detailed and costly regulations on the gas transmission pipeline industry.

API and AOPL stated that they asked their members to comment on the number of employees that would be covered under the definition of ''controller'' provided in the proposed rule; the aggregated cost estimate for training and qualifying these additional employees; and the estimated cost of point-to-point verification today and the projected estimate under the proposed rule. They stated that the cost estimates vary from operator to operator, but what each operator had in common was a tremendous increase in the number of additional employees that would need to be trained and qualified at an exorbitant cost. They stated that estimates on the increased number of employees under the proposed rule range from four times as many employees to train and qualify to more than ten times the current number of ''traditional controllers.'' The initial training and qualification costs ranged from $1.2 million to more than $5 million per operator with operators calculating these costs in a number of ways. The annual re-qualification costs would average $500,000 per operator. The point-to-point verification cost estimates averaged $500,000 per operator. They stated that one of their members included lost revenue from having to shut down the pump station, breakout storage tank areas, terminal deliveries and other hard assets in order to complete the point-to-point test. Also, they stated that the RIA did not have estimates for Alarm management and Qualification. They stated that a company estimated that it would cost $52,000 per year to review SCADA operations at least once a week as proposed, and evaluating a controller's physical abilities and implementing methods to address gradual degradation would cost $60,000 initially for 400 controllers and $8,000 annually thereafter.

Agency response—PHMSA has revised the regulatory analysis based on the revised scope of the rule, relevant comments received, and industry-submitted cost estimates. The scope of the rule is narrowed to exclude some gas LDCs and some gas transmission operators from most requirements in this rulemaking action. In addition, many of the individual requirements have been narrowed.

PHMSA concludes that the widely varying estimates of cost between our RIA and industry estimates resulted largely from confusion concerning the definition of a controller. As discussed above, the definition in the proposed rule had the unintended effect of appearing to encompass pipeline operator employees who use SCADA data but have no operational responsibilities for the pipeline. This significantly increased the number of employees that would have been subject to the requirements affecting controllers (e.g., fatigue mitigation, training and qualification). PHMSA agrees that applying these requirements to a much larger number of personnel would incur costs significantly higher than estimated in the RIA. The revised definition in the final rule focuses the requirements on controllers working in control rooms with operational responsibility—and the revised RIA uses a more-realistic estimate of the numbers of these personnel that will be affected.

Changes made in the final rule also significantly reduced the cost of elements not depending on the number of controllers affected. A major cost element was the proposed requirement for a one-time, 100 percent verification of SCADA systems. Commenters pointed out that this requirement would have involved significant costs for very little benefit. It is unlikely that such a ''baseline'' verification would have identified significant problems that could affect safety. This is because SCADA systems are already installed and in use by operators, so readings have already been verified and problems of any significance would likely have surfaced in the normal course of using a SCADA system over time. Thus, PHMSA agrees that the significant effort that would be required for a 100 percent baseline verification is unlikely to result in commensurate safety benefit, and so the final rule eliminates that requirement. It requires, instead, that SCADA displays be verified when field equipment monitored by SCADA is moved or when other changes that affect pipeline safety are made to field equipment or displays. These kinds of changes can introduce errors that would affect subsequent SCADA operations. For this reason, SCADA information is typically verified when making these types of changes, to assure that the changes have been implemented properly and that all equipment is functioning as intended once work is completed. As a result, this re-focused SCADA verification requirement imposes much lower additional costs. It essentially has the effect of requiring that all pipeline operators take the same actions that a conscientious operator would take even if no requirement existed.

The scope of required alarm verifications is also significantly reduced in this final rule. Commenters suggested that they would need to hire additional staff solely to perform the weekly and monthly reviews that would have been required by the proposed rule. PHMSA is persuaded that the alarm conditions are unlikely to change so much on a weekly basis, absent some significant ''event,'' that a thorough review would be needed on such a frequency. Response to an event would typically include the effect that the event may have had on alarms. The final rule has reduced these requirements to a monthly review of more-limited scope and an annual review of the alarm management plan, significantly reducing expected costs.

The revised RIA considers the changes in scope of the final rule and concludes that the rule is cost-beneficial.

E. Roles and Responsibilities

AGA stated that Congress intended for pipeline operators, not the agency, to write their control room management plans due to the diversity of control rooms. AGA stated that PHMSA should not dictate to an operator what responsibilities and tasks should be written into an operator's plan, which AGA considered was the effect of the specific elements included in the proposed rule.

API and AOPL supported the language in Paragraphs (b)(1)–(3) of the proposed rule (decision making during normal operations, role during abnormal events, and emergency role) and recommended deletion of paragraphs (b)(4) and (b)(5) (responsibility to coordinate with other operators having pipelines in common corridors and shift change). API and AOPL stated that operators currently maintain Emergency Response plans that address multi-pipeline corridors and appropriate notification and response procedures. They stated that these roles and responsibilities for controllers and other

[6] INGAA provided estimated implementation costs for selected requirements of the proposed rule at initial cost of $262,986,000 and annually at $139,798,000.

field personnel are clearly defined in the notification and response procedures. They believed that PHMSA might find API RP 1168 useful in developing control room management programs related to roles and responsibilities.

INGAA stated that this section should be deleted in its entirety because it runs counter to congressional direction and PHMSA's authority under Section 12 of the PIPES Act.

Agency response—PHMSA agrees that it is appropriate for operators to define roles and responsibilities for controllers, because of the many varied circumstances of different pipelines, their control rooms, and their operating practices. The proposed rule would have required that operators define these roles and responsibilities, and this has been retained in the final rule. The proposed rule went on to list certain roles and responsibilities that operators were to include in their definition. These have been deleted. PHMSA will verify during inspections that operators have appropriately defined the roles and responsibilities for their controllers.

PHMSA acknowledges API/AOPL's support of the proposed elements addressing normal operations, abnormal operations, and emergencies. These elements have been retained in the final 192.631(b) and 195.446(b) (**Note:** For editorial purposes PHMSA has moved the requirements proposed as § 195.454 to § 195.446). PHMSA also acknowledges the concerns expressed by AGA and gas pipeline operators that these elements tend to dictate the content (in part) of the roles and responsibilities the operator must define; however, PHMSA considers it essential that an operator's defined roles and responsibilities address normal, abnormal, and emergency operating conditions. The final rule does not include specific responsibilities for each of these conditions, but does require that the operator's definition consider them all.

PHMSA disagrees that it is not necessary to address shift change. Experience has shown the importance of controlling the transfer of information between controllers. Incidents, accidents, and other problems have occurred because of inadequate shift change. PHMSA has deleted the specific alternative mechanisms for recording a shift change that were included in the proposed rule (a system log-in feature or recording in shift records), but the final rule still requires that operators establish a method of recording controller shift changes. Operators are also required to define the information that controllers must discuss or exchange during shift changes and other instances in which another controller assumes responsibility.

F. Providing Adequate Information

AGA disagrees with periodic point-to-point verification requirements except to show that the SCADA system displays accurately depict field configuration when any modification affecting safety is made to field equipment or applicable software, and when new field equipment is installed.

INGAA stated that ''Adequate'' would seem to include those points that affect pipeline safety, and not each of the points that collect information about the pipeline which are completely unrelated to safety. INGAA estimates the safety-related points to be significantly outnumbered by the non-safety-related points.

API and AOPL stated that their members' experience shows that re-verification offers few safety benefits in return for the large investment in SCADA system and field resources that would be required. They suggested the emphasis of the regulation should be on management of change, rather than re-verification.

The proposed requirement to implement API RP 1165 for SCADA displays also caused concern. Pipeline operators objected to the requirement to apply the standard to existing displays, noting that controllers have been trained and have experience in using existing systems and that any benefit from implementing the standard would likely be small. Other operators objected to the incorporation of the standard or suggested that alternatives be allowed. AGA and several operators suggested that operators be required to implement the ''general'' requirements of the standard.

INGAA commented that the ''critical'' information required to be exchanged during shift changes required more definition. Some pipeline operators objected to the proposed requirement to provide an overlap between shifts to allow for shift change. API and AOPL suggested that PHMSA consider adopting API RP 1168 to govern shift change requirements.

Agency response—PHMSA has eliminated from the final rule the proposed requirement to perform 100 percent baseline verification of SCADA systems. PHMSA has also eliminated the proposed requirement that operators plan for systematic re-verification. As discussed above (see paragraph D of this section), PHMSA concluded that a baseline verification was unlikely to identify safety-related problems that had not already been recognized through normal operations. Similarly, new problems are likely to be identified as part of normal work before a re-verification would find them. As a result, the significant effort that would be required to implement these two requirements would result in little foreseen safety benefit. The final rule requires that operators verify SCADA when changes are made that can affect the information displayed by SCADA. SCADA problems are most likely to be introduced when making changes and verification that the SCADA system functions as intended are a means of identifying such problems.

With respect to API RP 1165, PHMSA agrees that applying the standard to existing displays is likely to lead to little safety benefit for the cost incurred, since controllers have already been trained and are experienced in using existing displays in their current operations. In addition, changes made to existing displays would require retraining of controllers and could introduce confusion unnecessarily. When displays are changed, however, retraining will be needed because of the change and the reasons for not disrupting controllers' use of displays with which they are familiar no longer apply. PHMSA has limited the requirement to apply the standard to displays that are added, expanded or replaced after the date by which the control room management procedures required by this rule must be implemented. For gas pipelines, the final rule requires that only certain sections of the standard be implemented. The cited sections address the aspects that are most important to assuring that displays are configured to be most useful to controllers for managing safe pipeline operations, including human factors engineering. PHMSA is not aware of equivalent standards that would accomplish the same purpose, and has not provided for an alternative. Flexibility is available in that operators need not implement a provision of API RP 1165 if they demonstrate that the provision is not practical for the SCADA system used.

PHMSA has eliminated the requirement to provide for overlap of shifts to facilitate shift turnover. Overlaps will likely be needed to accommodate the need to transfer information to an oncoming controller. The transfer of information is required, obviating the need to specify an overlap requirement in the regulation. The final rule for gas pipeline operators requires that operators establish procedures for when a different controller assumes responsibility, including the content of information that must be exchanged, but

has deleted the requirement that ''critical'' information must be included. It will be up to operators to define the information that is important to impart to oncoming controllers. API RP 1168 provides guidance that can assist in this definition. This standard is incorporated by reference for this purpose for hazardous liquid pipeline operators. PHMSA will verify during inspections that operators have included in their definitions the information needed by their controllers to assure pipeline safety.

G. Fatigue Mitigation

The National Transportation Safety Board (NTSB) stated that it does not believe the proposed rule satisfactorily addresses mitigation of controller fatigue. NTSB stated that the proposed rule should require operators of pipeline facilities to incorporate fatigue research, circadian rhythms, and sleep and rest requirements when establishing a maximum limit on controller shift length, maximum limit on controller hours of service, and schedule rotations. Also, NTSB stated that it would like PHMSA to provide additional information about the agency's criteria for evaluating operators' plans and to explain how the agency intends to monitor the effectiveness of implementing those plans on fatigue mitigation.

Some individuals suggested that the proposed rule does not go far enough. Some suggested a need for a uniform maximum hours of work limit to be established in the regulations. These individuals stated that the rule needs to set standards to decrease the likelihood of controller fatigue rather than passing that duty on to operators. They stated that the proposed rule does not set standards regarding fixed versus rotating shifts and does not set standards for the length of each rotation. One individual suggested setting shifts at ten hours with two hours overlap between beginning and end of shifts and with a three consecutive day break. Some suggested using part-time workers to overlap 12 hour shifts. One stated that the agency should redraft the vague provisions found in the shift change and fatigue sections and should provide more specific examples for the pipeline operators to adequately comply with the rule. One individual stated that for the proposed rule to increase vigilance and mitigate fatigue, the agency must address boredom and monotony. One suggested that the agency should consider methods that specifically address mental fatigue and an adrenaline response training program for all pipeline workers.

Other citizens supported the proposed rule on fatigue mitigation. One stated that fatigue management should be implemented on an intra-company basis based on the individual needs of the controllers rather than on an industry-wide scale. Others commended the agency for not prescribing a maximum hours of work limit. Some supported the need for testing of physical and visual abilities for controllers. One individual suggested a requirement for controllers to check if they are physically fit to perform the tasks assigned. One individual suggested implementing a requirement that workers make observational entries every quarter hour to ensure that they remain engaged in their duties and maintain continual mental vigilance throughout a shift.

AGA objected to requiring that operators implement additional measures to monitor for fatigue when a single controller is on duty. AGA stated that the gas distribution industry's safety record has demonstrated that a single controller can safely operate a pipeline.

API and AOPL suggested that PHMSA modify paragraph (d) of the proposed rule to reflect that despite reasonable fatigue mitigation measures the operator may not be able to ''prevent'' fatigue from occurring. Also, they encouraged PHMSA to consider adopting the language in Section 6 of API RP 1168 on Fatigue Management.

INGAA stated that the joint trade associations' substitute rule addresses fatigue. INGAA stated that it urges adoption of these provisions along with the rest of the substitute rule.

Agency response—Fatigue can be an important factor affecting controller performance. NTSB has recommended that PHMSA establish requirements in this area, and the PIPES Act requires that operator human factors plans include a maximum hours of service limit. Fatigue is something that affects all people at some time and many individual comment submitters have suggested ways in dealing with this issue. Nonetheless, PHMSA agrees that it is difficult to establish and enforce regulations that ''prevent'' fatigue. In this final rule, PHMSA requires that operators implement methods to reduce the risks associated with fatigue.

Pipeline operators will be required to comply with a maximum hours of service limit. This rule does not establish such a limit, but rather requires that each operator establish a reasonable limit for itself. This will allow consideration of factors that may be unique to the operation of particular pipelines. Experience has also shown that deviations from normal scheduling (e.g., requiring a controller to work a double shift due to unexpected absence) can result in excessive fatigue; establishing a limit will have the effect of reducing the occurrence of these deviations.

At the same time, PHMSA recognizes there may be infrequent emergencies during which an operator may find the need to deviate from the maximum limit it has established to ensure adequate coverage in the control room for emergency response. Accordingly, the regulation provides that an operator's procedures may provide for the deviation from the maximum limit in the case of an emergency. Such a deviation would only be permitted if necessary for the safe operation of the pipeline facility. PHMSA or the head of the appropriate State agency, as the case may be, may review the reasonableness of any deviation from an operator's maximum limit on hours of service when considering whether to take enforcement action.

PHMSA has not included an explicit requirement that operators incorporate fatigue research and circadian rhythms when establishing their limits. Operators will be expected to have a scientific basis for the limit they select. PHMSA expects that operators will consider circadian effects, need for rest, and other factors highlighted by relevant research, but PHMSA sees no benefit in including general references to these factors in this rule. PHMSA has included in this final rule a requirement that shift lengths and schedule rotations provide controllers sufficient off-duty time to achieve eight hours of continuous sleep. This addresses NTSB's concerns that sleep and rest needs to be accommodated. PHMSA has already issued an advisory bulletin providing guidance to pipeline operators on ways to manage fatigue,[7] and may issue additional guidance if new research, operational experience, or other factors indicate a need to do so.

PHMSA has not yet developed criteria for reviewing operator-developed hours of service limits and human factors management procedures, but plans to develop inspection criteria.

PHMSA has not included in this final rule a requirement to provide additional measures to address fatigue in situations where a single controller is on duty. Operators will need to address single-controller situations in their fatigue management plans, but no particular additional measures are required to monitor fatigue of a single controller at this time.

[7] ADB–05–06, August 11, 2005 (70 FR 46917).

H. Alarm Management

AGA stated that the proposed rule for alarm management is overly prescriptive. AGA requested that language be written at a high level to account for the diversity of control room systems used by different operators.

API and AOPL stated that they believe the alarm management requirement of the proposed rule is too prescriptive and will not result in an application of ''best practices'' as currently written. API and AOPL suggested that PHMSA require each operator to maintain an alarm management plan based on currently accepted industry practices. They stated that the plan should be based on a company's risk assessment related to alarm management and include regular audits and reviews of the alarm system performance to identify areas for training and improvement. They also stated that a company should assess risks associated with alarming and modify its program as needed on a less frequent basis.

INGAA stated that this section should be deleted in its entirety because it runs counter to congressional direction as expressed in Section 12 of the PIPES Act and because it will not increase pipeline safety. INGAA urged the agency to adopt the joint trade associations' substitute rule for alarm management. INGAA also contended that the requirement would be very costly to implement.

Agency response—The alarm management provisions included in the NPRM were prescriptive and required frequent reviews. In addition, some of the required review elements would have been difficult to identify. For example, weekly reviews would have been required to include events that should have resulted in alarms but did not. Such events could be identified using SCADA data (even though they did not produce alarms) but would have required detailed review to do so. PHMSA is persuaded by the comments that the proposed provisions would have been burdensome and might not necessarily have addressed factors important for alarm management in particular pipeline control rooms. Instead, PHMSA has adopted the suggestions to require that each operator have an alarm management plan. Operators will develop those plans in recognition of issues that have proven important to their operations.

The final rule continues to require that alarm management plans include some critical elements. Foremost among these is a monthly review of points impacting safety that are not providing current data to controllers or points that may be triggering erroneous alarms. Operators respond to problems that occur in SCADA systems (and which can result in inaccurate information being displayed) by taking the points ''off scan,'' which means operators manually ''force'' certain information to be displayed. Controllers are generally made aware that the affected data is not timely and accurate, but the forced values (or no values at all) help prevent confusion. Operators return the data points to normal operation once the problems with the SCADA system have been identified and corrected. Generally, SCADA systems involve many data points (often thousands) and controllers are able to manage pipeline operations and respond to abnormal events even though some data is not current. Still, PHMSA considers it important that SCADA problems be addressed promptly, so that controllers have the most accurate and timely information with which to diagnose and respond to pipeline events. The monthly review is intended to assure that the need to address SCADA problems promptly is not lost in the crush of other activities.

The final rule will also require that operators monitor the content and volume of activity being directed to each controller. This requirement is intended to identify so-called alarm ''floods,'' which can involve many alarms (often not relating to pipeline safety) occurring simultaneously or in a short period. Such floods can overwhelm the capability of a controller to recognize problems and events that may underlie the alarms, and thus delay prompt response. PHMSA accepts the point made by commenters that the agency should not be regulating use of SCADA alarms for purposes not related directly to pipeline safety, but still considers that it is important to assure that controllers' ability to respond appropriately to safety-related alarms is not compromised. The requirement to monitor for volume and content of activity is intended to do this. Operators who identify situations in which controllers are receiving more information or required to perform more activities than they can process and address will be expected to take appropriate corrective action in a timely fashion.

It is also critical that operators verify correct alarm set points and descriptions, review their alarm management plans regularly, but at least annually, and address deficiencies identified in their reviews. Accordingly, these elements are also included in the final rule.

I. Operating Experience

AGA requested that the proposed requirements related to review of operating experience be deleted in their entirety, because AGA contended that they are duplicative of other sections in 49 CFR parts 191 and 192. AGA, INGAA, and others also objected to the proposed requirement that operators establish a threshold for near-miss events (i.e., events of some significance but which do not meet criteria for reporting to regulators as an incident) and include them in periodic reviews. The comments noted that this concept is impractical and would be difficult to enforce, that it effectively elevates these ''near-miss'' events to equality with incidents requiring reporting, and that it would add significant additional burden for very little benefit.

INGAA stated that this section should be deleted in its entirety because it runs counter to congressional direction as expressed in Section 12 of the PIPES Act and because it will not increase pipeline safety.

API and AOPL suggested deleting requirements associated with the need to review accuracy, timeliness and portrayal of field information on SCADA displays and review of events that do not meet the threshold for reporting as accidents.

One individual commented that having controllers review non-reportable events, along with other activities that this rule is imposing on controllers, would require an excessive amount of valuable time.

Agency response—PHMSA does not agree that the proposed review requirements duplicate existing requirements. The requirements in this rule will build on existing requirements to identify and report incidents that meet certain criteria. PHMSA recognizes that those regulations require that operators review events to identify information that must be reported. The requirements in this rule are focused on identifying the effect of operational events on controllers, controller workload, and the ability of controllers to manage pipeline operations safely. PHMSA expects that these additional considerations will be included in the reviews of incidents currently conducted. Adding these considerations to existing reviews should result in minimal additional burden, but will help improve safe pipeline operations. The final rule will require that operators consider, in their reviews of reportable events, deficiencies relating to controller fatigue, field equipment, the operation of any relief device, SCADA system configuration, and SCADA

performance. Operators will be required to incorporate lessons learned from these reviews into controller training programs.

PHMSA is persuaded that the requirement to conduct similar reviews for events that do not meet reporting criteria (i.e., near-miss events) is not necessary at this time. These events are not subject to reviews related to the need to submit information concerning the event, because operators are not required to report them. Accordingly, the entire review effort would be additional, rather than control-room considerations being a minimal addition of effort to an already-required review. Furthermore, these events have less safety significance than those that must be reported. The proposed provision to review near-miss events for control room lessons has thus not been included in the final rule, but PHMSA encourages operators to use near-miss information to advance pipeline safety.

J. Change Management

AGA requested that change management be removed from the proposed rule. AGA stated that the concept is best left to individuals familiar with an operator's entire operations and maintenance manual. AGA further stated that the person managing operations and maintenance should address the changes that can impact the job of a controller or any pipeline function. AGA stated that since most changes to a pipeline system have nothing to do with controllers, the change management concept should not be introduced into pipeline safety through a control room management rule.

API and AOPL recommended that PHMSA consider replacing the proposed language concerning change management with the language contained in Section 7 of API RP 1168. They stated that the proposed language is too prescriptive, would cause delays in implementation, and result in additional costs with no real benefit to justify these additional procedures.

INGAA stated that this section should be deleted in its entirety because it runs counter to congressional direction as expressed in Section 12 of the PIPES Act, and because it will not increase pipeline safety.

Agency response—Not all pipeline changes affect controllers or control room operations. Some do, however, and it is important that controllers recognize that such changes are occurring, have sufficient training before they occur, and understand how they will affect the response of the pipeline to operational events. PHMSA has thus retained requirements for change management in the final rule.

At the same time, PHMSA agrees that the proposed requirements were too prescriptive and that pipeline operators should have flexibility in integrating change management into their organizational structure and business operations. The final rule requires that gas pipeline operators establish communications between control room representatives, management, and field personnel when planning and implementing physical changes to pipeline equipment or configurations. Operators must seek control room or control room management participation prior to implementing significant pipeline hydraulic or configuration changes. Field personnel will also be required to notify the controller when emergency conditions exist or when making field changes that affect control room operations. These requirements will assure that changes that could affect the ability of controllers to monitor the pipeline and assure safe operation are identified early so that training programs and procedures can be modified, if needed, and controllers can be made aware of changes that could affect their activities.

Operators of hazardous liquid pipelines will be required to implement change management provisions in Section 7 of API RP 1168. These are similar to the requirements for gas pipeline operators discussed above. PHMSA recognizes that Section 7 of API RP 1168, and other recommended practices incorporated by reference, commonly use the word ''should'' to denote a recommendation or that which is advised but not required. For example, paragraph 7.1 of API RP 1168 states that ''[p]ipeline control room personnel should be included in the project or change design and planning process.'' Where a standard incorporated by reference utilizes words of recommendation, such as ''should,'' an operator is expected to follow such provisions unless the operator has documented the technical basis for not implementing the recommendation. This has been PHMSA's position with regard to compliance with standards incorporated by reference that utilize words of recommendation. *See, e.g.,* 64 FR 15926, Apr. 2, 1999. In the above-referenced example, an operator would be expected to include control room personnel in the project or change design and planning process unless the operator can show the technical basis for why this could not occur.

K. Training and Qualification

A citizen suggested the use of videos instead of site visits for controllers. One individual suggested the use of a standardized examination for certification of controllers based on each pipeline's configuration, and a requirement for operators to consider the educational background of the individuals applying for a controller position. Another individual suggested controller feedback on training.

AGA requested that the Training section be deleted because 49 CFR part 192, subpart N provides operator qualification rules for all pipeline employees performing covered tasks.

INGAA stated that this section should be deleted in its entirety because it exceeds congressional direction and PHMSA's authority under Section 12 of the PIPES Act and because it will not increase pipeline safety.

API and AOPL stated that under the proposed rule's overly broad definitions of ''controller'' and ''control room,'' operators would have to expend considerable resources to meet the proposed requirements. They suggested deleting some sections from the proposed rule.

One individual agreed with an industry practice of a three year re-qualification period rather than annual re-qualification as proposed by PHMSA.

Agency response—Training is an important element of this rule. In many ways, training needs for controllers are different from those for other pipeline employees. Existing operator qualification requirements (subpart N of part 192 and subpart G of part 195) address training and qualification for specific tasks meeting certain criteria (called ''covered tasks''). Controllers require training that goes beyond specific tasks. They must be able to recognize abnormal and emergency events from the indications and alarms that these events will produce through SCADA. NTSB has recognized that controllers need this training and has recommended that PHMSA establish requirements for controller training that include simulator or non-computerized (e.g., tabletop exercises) training to recognize abnormal operating conditions, in particular leak events. The PIPES Act mandates that PHMSA implement standards in response to this NTSB recommendation. Accordingly, PHMSA has included such training requirements in this final rule.

PHMSA has revised the final rule to eliminate some of the specific elements that the proposed rule would have required to be included in this training. In particular, PHMSA has eliminated

the requirements that controller training include site visits to a representative sample of pipeline facilities similar to those for which the controller is responsible and that controllers receive hydraulic training sufficient to attain a thorough knowledge of the pipeline system. PHMSA agrees that these proposed requirements would have entailed benefit that was difficult to quantify. A site visit, for example, might impart some knowledge concerning what is required to operate equipment at the site but would be unlikely to result in lasting detailed knowledge about equipment operation and the potential effects of equipment failures. Instead, the final rule requires that controller training be sufficient to obtain a working knowledge of the pipeline system, especially during the development of abnormal conditions. Controller training must also include use of simulators or non-computerized simulations for training in identification of abnormal operating conditions. These requirements will assure that controllers receive the training recommended by NTSB, and required by the PIPES Act, while allowing operators flexibility to design training programs that fit their operations.

L. Executive Validation

AGA requested that the senior executive validation requirements be removed from the rule. AGA commented that since the executive cannot approve the plan on the agency's behalf, it is not logical for the executive to independently approve the plan just to have the agency subsequently approve or reject the plan.

API and AOPL stated that they would like to work with PHMSA to more clearly define operator accountability. They stated that the paragraph, as currently worded with ''senior executive officer,'' is inappropriate. They stated that the definition of ''senior executive officer'' differs among operators, and API and AOPL would like to better understand what the term means to PHMSA. They stated that many of their members also commented that verifying that ergonomic and fatigue factors continue to be addressed or that controllers are involved in finding ways to improve safety is more appropriate for a lower level of management than what would constitute a ''senior executive officer.'' Even if it were appropriate for executive signoff, they said they believe the current language of the proposed amendments is too narrow and specific.

INGAA stated that requirements for executive validation should be deleted in their entirety. INGAA said this section is inconsistent with congressional direction and will not increase pipeline safety. INGAA stated that it understands the value of the proposed requirement to validate that the requirements of this rule have been implemented, since it could engender increased confidence and oversight of the respective control rooms and associated processes.

INGAA stated that it sees no demonstrable safety benefit discussed in the proposed rule and there are no tangible benefits to be gained by promulgating this section.

One individual stated that the senior executive officer validation should be required every three years.

Agency response—The purpose of this proposed provision was to assure management attention to control room issues. A senior executive would have been required to certify annually that the operator had reviewed controller training and qualification programs and found them adequate, that only qualified controllers had been allowed to operate the pipeline, that the requirements of this rule had been complied with, that the operator continued to address fatigue and ergonomic issues, and that controllers were involved in continuing efforts to sustain and improve safety. This was not intended to substitute for approval of a plan by the regulator, but rather to assure that a plan submitted to the regulator had obtained appropriate management approval within the operator's organization.

PHMSA agrees with commenters that it is likely that specific actions included within the proposed verification would be performed by lower-level managers and staff. The extent of actions that might have been required (or implied) was unclear in some cases. For example, ergonomic issues are not otherwise addressed in the proposed rule, but only in the proposed requirement that a senior officer certify that they were continuing to be addressed. PHMSA has, therefore, decided not to include the proposed requirement for periodic management certification in this rulemaking action.

PHMSA has included in this final rule a requirement that operators, upon request, must submit their completed control room management plans to PHMSA or, in the case of an intrastate pipeline facility regulated by the state, to the appropriate state agency. PHMSA expects that regulators (state or PHMSA) will generally review plans, and compliance with the requirements of this final rule, through the regular inspection process.

M. Qualification of Pipeline Personnel

INGAA stated that it supported the development of 49 CFR part 192, subpart N, when it was initially promulgated, and still believes it to be valid, including as it applies to controllers. Also, INGAA stated that it supports the use of the national consensus-based standard ASME B31Q, which addresses controller issues as well. INGAA stated that it does not see the need for a qualification section in this proposed rule, and notes the PIPES Act does not contemplate this section, either.

API and AOPL stated that they believe PHMSA would create confusion by keeping this particular paragraph in the final rule. They recommend that PHMSA delete proposed paragraph (i) and consider incorporating the requirements into the current subpart G—Qualification of Pipeline Personnel. They stated that if ''qualification'' refers to any other purpose than ''OQ'', then PHMSA needs to clarify that requirement. API and AOPL stated that they support the concept in paragraph (i)(2) of the proposed rule concerning evaluating a controller's physical abilities; however, they recommended that it be deleted because it creates confusion among operators until further research can be performed to develop standardized thresholds for the various physical attributes. Also, they stated their concern that compliance with the requirements in this paragraph could result in violation of the Americans with Disabilities Act.

AGA expressed concern that PHMSA is essentially rewriting the Operator Qualification rule. AGA stated that the two paragraphs for controller training and qualification are almost as long as 49 CFR part 192, subpart N, which provides operator qualification rules for all pipeline covered employees.

Agency response—PHMSA is persuaded by the comments to eliminate from this final rule specific requirements for periodic qualification of controllers, deferring to the existing operator qualification regulations in that regard. PHMSA recognizes, however, that certain changes to operators' controller qualification criteria will result from implementing the new requirements in this final rule and that operators will incorporate those changes, as necessary, into their qualification programs.

N. Implementation

The proposed rule would have established different deadlines for preparing and implementing control room management procedures,

depending on the type of pipeline or control room. Proposed time frames varied from 12 to 30 months after publication of the final rule. Industry comments generally found the proposed time frames inappropriate. The draft alternative rule language submitted by the joint trade associations included a requirement that procedures be written within 18 months following publication of the final rule and be implemented within 3 years of publication.

Agency response—The elimination of local control stations from the final rule's scope, and its focus on control rooms using SCADA systems, makes it unnecessary to establish differing implementation schedules for control regimes of differing complexity. PHMSA agrees that the implementation time frames proposed by the joint trade associations would allow for a thorough process development phase before implementation, a familiarity with standards under development (such as International Society of Automation (ISA) 18.02 and API RP 1167), and an appropriate implementation time to promote consistency and understanding among operators. We have therefore, incorporated these time frames into the final rule.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. This rulemaking also carries out the mandates of the PIPES Act of 2006—to address human factors and other aspects of control room management for pipelines where controllers use supervisory control and data acquisition (SCADA) systems (section 12) and to publish standards implementing certain NTSB recommendations (section 19).

B. Executive Order 12866 and DOT Policies and Procedures

This rulemaking action has been designated a significant regulatory action under Executive Order 12866 (58 FR 51735; Oct. 4, 1993). The rule is also a significant regulatory action under the U.S. Department of Transportation regulatory policies and procedures (44 FR 11034; Feb. 26, 1979) because of the substantial congressional, industry, and public interest in control room operations and human factors management plans. Therefore, the Office of Management and Budget (OMB) has reviewed a copy of this rulemaking.

The expected benefits of the rulemaking action are the reduction in pipeline incidents and accidents resulting from controller error and the associated societal costs that can be attributed to improved control room management and operations. The estimated benefits consist of two distinct measures: (1) The reduction in incidents and accidents due to errors attributed to control room personnel and (2) the reduction of societal costs related to those incidents and accidents that can be traced to factors related to control room operations management. Control room personnel errors can occur, for example, when a fatigued control room worker reads a pressure indicator incorrectly and increases pressure, leading to a pipeline rupture. Control room management errors occur when a procedure or process is not in place resulting in failure to detect an abnormal condition or a failure to respond to an incident or accident appropriately. For example, alarm systems may not be audited and an incident occurs that does not trigger an alarm. The remedial action (the rule) addresses both personnel error and operations management.

This rulemaking action is not expected to adversely affect the economy or the environment. For those costs and benefits that can be quantified the present value of net benefits, discounted at 7 percent, are expected to be about $6 million over a ten-year period after all of the requirements are implemented. This rule is also not expected to have an annual effect of more than $100 million on the national economy; therefore, the rule is not considered an economically significant regulatory action within the meaning of Executive Order 12866.

A complete RIA, including an analysis of costs and benefits, is available in the docket.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether its rulemaking actions would have a significant economic impact on a substantial number of small entities. There were some changes going from the NPRM to the final rule that considered the concerns of small businesses. First, in response to industry's comments and to reduce the burden on small firms, PHMSA redefined the criteria to better differentiate between large operations that would be subject to all the requirements and those smaller operations that would have more limited regulation. PHMSA clarified the type of operators that would be affected by refining the definitions of controller and control room to determine which operators would need to be subject to the requirements. Then, PHMSA separated the operators based on risk to determine which operators needed to comply with the requirements. This redefinition reduced the number of requirements for small entities. Most small firms are now only required to comply with certain requirements mandated by law, namely fatigue mitigation (including training), and recordkeeping for compliance purposes.

Second, to better understand the distribution of systems based on size in the pipeline industry, PHMSA examined the operators' annual reports to further separate the firms by small, medium and large operations. The categories for this analysis were determined either by the number of pipeline miles, the number of customers served, or the complexity of the business. PHMSA has made every effort to limit the economic impact to small firms by taking steps to exempt gas distribution operators with fewer than 250,000 services from many of the requirements likely to have more than minimal cost impacts.

Based on the submission of annual reports, PHMSA estimates that there are 220 hazardous liquid (HL) system operators with fewer than 50 miles of pipeline that meet the definition of small entities. Also PHMSA estimated that 1,257 of 1,330 gas distribution systems and 475 of 950 transmission systems (for a total of 1,732 gas systems) fit the definition of a small operator.

The table below summarizes the expected compliance cost per small operator.

First-year costs		Annual recurring costs	
Low	High	Low	High
$6,000	$9,000	$2,300	$2,800

Although PHMSA does not have revenue data for the individual small pipeline operators, based on the most recent published operator revenue data, the estimated costs are significantly less than one percent of revenues for most firms and there is not likely to be a significant impact on a substantial small number of operators.[8]

Therefore, based on this information showing that the economic impact of this rule on small entities will be minor, I certify under section 605 of the Regulatory Flexibility Act that these regulations will not have a significant impact on a substantial number of small entities. The final Regulatory Flexibility Analysis is available in the docket.

D. Executive Order 13175

PHMSA has analyzed this rulemaking action according to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this rulemaking action would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), DOT will submit all necessary documents to request the Office of Management and Budget (OMB) grant approval for a new information collection. A copy of the analysis document will also be entered in the docket. The RIA contains detailed information on how PHMSA arrived at the cost and time estimates noted below.

This final rule contains information collection requirements that affect hazardous liquid and gas pipeline systems. The rule requires hazardous liquid and gas pipeline operators to keep records on the following sections: Control room management procedures; roles and responsibilities of pipeline controllers; information on SCADAs, fatigue mitigation; alarm management; change management; operating experience; training; compliance validation; and deviations. PHMSA estimates that it would take pipeline operators approximately 127,328 hours per year to comply with the rule's recordkeeping and record retention requirements. PHMSA estimates that the total costs are approximately between $4.3 million and $5.9 million the first-year and approximately between $4.2 million and $5.8 million in successive years. The RIA has the details on the estimates used in this analysis.

F. Unfunded Mandates Reform Act of 1995

This rulemaking action does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of this rulemaking action.

G. National Environmental Policy Act

PHMSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). The agency has determined that implementation of this rule will not have any significant impact on the quality of the human environment. The environmental assessment is available for review in the docket.

H. Executive Order 13132

PHMSA has analyzed this rulemaking action according to Executive Order 13132 (''Federalism''). The rulemaking action does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This rulemaking action does not impose substantial direct compliance costs on State and local governments. Further, no consultation is needed to discuss the preemptive effect of the proposed rule. The pipeline safety laws, specifically 49 U.S.C. 60104(c), prohibits State safety regulation of interstate pipelines. Under the pipeline safety law, States have the ability to augment pipeline safety requirements for intrastate pipelines regulated by PHMSA, but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility PHMSA does not regulate. It is these statutory provisions, not the rule, that govern preemption of State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

I. Executive Order 13211

Transporting gas and hazardous liquids impacts the nation's available energy supply. However, this rulemaking action is not a ''significant energy action'' under Executive Order 13211 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this rulemaking action as a significant energy action.

J. Privacy Act Statement

You may search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

List of Subjects

49 CFR Part 192

Incorporation by reference, Gas, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Pipeline and Hazardous Materials Safety Administration is amending 49 CFR Chapter I as follows:

PART 192—TRANSPORTATION OF NATURAL GAS AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, and 60137; and 49 CFR 1.53.

■ 2. In § 192.3, definitions for ''alarm,'' ''control room,'' ''controller,'' and ''Supervisory Control and Data Acquisition (SCADA) system'' are added in appropriate alphabetical order as follows:

§ 192.3 Definitions.

* * * * *

Alarm means an audible or visible means of indicating to the controller that equipment or processes are outside operator-defined, safety-related parameters.

Control room means an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.

Controller means a qualified individual who remotely monitors and

[8] *See: http://www.ibisworld.com/industry/retail.aspx?indid=1179&chid=1; http://www.ibisworld.com/industry/retail.aspx?indid=1184&chid=1; http://www.ibisworld.com/industry/retail.aspx?indid=1181&chid=1; http://www.bts.gov/publications/national_transportation_statistics/html/table_03_18.html.*

controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.

* * * * *

Supervisory Control and Data Acquisition (SCADA) system means a computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline facility.

* * * * *

■ 3. Amend § 192.7 as follows:

■ a. In paragraph (b) add ''202–366–4595'' after ''20590–001;''

■ b. In the table in paragraph (c)(2), item B.(7) is added to read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(2) * * *

Source and name of referenced material	49 CFR reference
* * * * * * *	
B. * * *	
(7) API Recommended Practice 1165 ''Recommended Practice for Pipeline SCADA Displays,'' (API RP 1165) First edition (January 2007).	§ 192.631(c)(1).
* * * * * * *	

* * * * *

■ 4. In § 192.605, paragraph (b)(12) is added to read as follows:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) * * *

(12) Implementing the applicable control room management procedures required by § 192.631.

* * * * *

■ 5. In § 192.615, paragraph (a)(11) is added to read as follows:

§ 192.615 Emergency plans.

(a) * * *

(11) Actions required to be taken by a controller during an emergency in accordance with § 192.631.

* * * * *

■ 6. Section 192.631 is added to Subpart L to read as follows:

§ 192.631 Control room management.

(a) *General.*

(1) This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section, except that for each control room where an operator's activities are limited to either or both of:

(i) Distribution with less than 250,000 services, or

(ii) Transmission without a compressor station, the operator must have and follow written procedures that implement only paragraphs (d) (regarding fatigue), (i) (regarding compliance validation), and (j) (regarding compliance and deviations) of this section.

(2) The procedures required by this section must be integrated, as appropriate, with operating and emergency procedures required by §§ 192.605 and 192.615. An operator must develop the procedures no later than August 1, 2011 and implement the procedures no later than Febraury 1, 2012.

(b) *Roles and responsibilities.* Each operator must define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following:

(1) A controller's authority and responsibility to make decisions and take actions during normal operations;

(2) A controller's role when an abnormal operating condition is detected, even if the controller is not the first to detect the condition, including the controller's responsibility to take specific actions and to communicate with others;

(3) A controller's role during an emergency, even if the controller is not the first to detect the emergency, including the controller's responsibility to take specific actions and to communicate with others; and

(4) A method of recording controller shift-changes and any hand-over of responsibility between controllers.

(c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

(1) Implement sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 (incorporated by reference, see § 192.7) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 are not practical for the SCADA system used;

(2) Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays;

(3) Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months;

(4) Test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and

(5) Establish and implement procedures for when a different controller assumes responsibility, including the content of information to be exchanged.

(d) *Fatigue mitigation.* Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined:

(1) Establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight hours of continuous sleep;

(2) Educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue;

(3) Train controllers and supervisors to recognize the effects of fatigue; and

(4) Establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility.

(e) *Alarm management.* Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:

(1) Review SCADA safety-related alarm operations using a process that ensures alarms are accurate and support safe pipeline operations;

(2) Identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities;

(3) Verify the correct safety-related alarm set-point values and alarm descriptions at least once each calendar year, but at intervals not to exceed 15 months;

(4) Review the alarm management plan required by this paragraph at least once each calendar year, but at intervals not exceeding 15 months, to determine the effectiveness of the plan;

(5) Monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not to exceed 15 months, that will assure controllers have sufficient time to analyze and react to incoming alarms; and

(6) Address deficiencies identified through the implementation of paragraphs (e)(1) through (e)(5) of this section.

(f) *Change management.* Each operator must assure that changes that could affect control room operations are coordinated with the control room personnel by performing each of the following:

(1) Establish communications between control room representatives, operator's management, and associated field personnel when planning and implementing physical changes to pipeline equipment or configuration;

(2) Require its field personnel to contact the control room when emergency conditions exist and when making field changes that affect control room operations; and

(3) Seek control room or control room management participation in planning prior to implementation of significant pipeline hydraulic or configuration changes.

(g) *Operating experience.* Each operator must assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures by performing each of the following:

(1) Review incidents that must be reported pursuant to 49 CFR part 191 to determine if control room actions contributed to the event and, if so, correct, where necessary, deficiencies related to:

(i) Controller fatigue;

(ii) Field equipment;

(iii) The operation of any relief device;

(iv) Procedures;

(v) SCADA system configuration; and

(vi) SCADA system performance.

(2) Include lessons learned from the operator's experience in the training program required by this section.

(h) *Training.* Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

(1) Responding to abnormal operating conditions likely to occur simultaneously or in sequence;

(2) Use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions;

(3) Training controllers on their responsibilities for communication under the operator's emergency response procedures;

(4) Training that will provide a controller a working knowledge of the pipeline system, especially during the development of abnormal operating conditions; and

(5) For pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application.

(i) *Compliance validation.* Upon request, operators must submit their procedures to PHMSA or, in the case of an intrastate pipeline facility regulated by a State, to the appropriate State agency.

(j) *Compliance and deviations.* An operator must maintain for review during inspection:

(1) Records that demonstrate compliance with the requirements of this section; and

(2) Documentation to demonstrate that any deviation from the procedures required by this section was necessary for the safe operation of a pipeline facility.

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

■ 7. The authority citation for part 195 is amended to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118, and 60137; and 49 CFR 1.53.

■ 8. In § 195.2, definitions for ''alarm,'' ''control room,'' ''controller,'' and ''Supervisory Control and Data Acquisition (SCADA) system'' are added in appropriate alphabetical order as follows:

§ 195.2 Definitions.

* * * * *

Alarm means an audible or visible means of indicating to the controller that equipment or processes are outside operator-defined, safety-related parameters.

* * * * *

Control room means an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.

Controller means a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.

* * * * *

Supervisory Control and Data Acquisition (SCADA) system means a computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline facility.

* * * * *

■ 9. Amend 195.3 as follows:

■ a. In paragraph (b) add ''202–366–4595'' after ''20590–001'';

■ b. In the table in paragraph (c) items B.(18) and B.(19) are added to read as follows:

§ 195.3 Incorporation by reference.

* * * * *

(c) * * *

Source and name of referenced material	49 CFR reference
* * * * * * *	
B. * * *	
(18) API Recommended Practice 1165 ''Recommended Practice for Pipeline SCADA Displays,'' (API RP 1165) First Edition (January 2007).	§ 195.446(c)(1).
(19) API Recommended Practice 1168 ''Pipeline Control Room Management,'' (API RP 1168) First Edition (September 2008).	§ 195.446(c)(5).
* * * * * * *	

■ 10. In § 195.402, paragraph (c)(15) and (e)(10) are added to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(15) Implementing the applicable control room management procedures required by § 195.446.

* * * * *

(e) * * *

(10) Actions required to be taken by a controller during an emergency, in accordance with § 195.446.

* * * * *

■ 11. Section 195.446 is added to read as follows:

§ 195.446 Control room management.

(a) *General.* This section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this section. The procedures required by this section must be integrated, as appropriate, with the operator's written procedures required by § 195.402. An operator must develop the procedures no later than August 1, 2011 and implement the procedures no later than February 1, 2012.

(b) *Roles and responsibilities.* Each operator must define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following:

(1) A controller's authority and responsibility to make decisions and take actions during normal operations;

(2) A controller's role when an abnormal operating condition is detected, even if the controller is not the first to detect the condition, including the controller's responsibility to take specific actions and to communicate with others;

(3) A controller's role during an emergency, even if the controller is not the first to detect the emergency, including the controller's responsibility to take specific actions and to communicate with others; and

(4) A method of recording controller shift-changes and any hand-over of responsibility between controllers.

(c) *Provide adequate information.* Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following:

(1) Implement API RP 1165 (incorporated by reference, *see* § 195.3) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of API RP 1165 are not practical for the SCADA system used;

(2) Conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays;

(3) Test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months;

(4) Test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and

(5) Implement section 5 of API RP 1168 (incorporated by reference, *see* § 195.3) to establish procedures for when a different controller assumes responsibility, including the content of information to be exchanged.

(d) *Fatigue mitigation.* Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined:

(1) Establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight hours of continuous sleep;

(2) Educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue;

(3) Train controllers and supervisors to recognize the effects of fatigue; and

(4) Establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility.

(e) *Alarm management.* Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to:

(1) Review SCADA safety-related alarm operations using a process that ensures alarms are accurate and support safe pipeline operations;

(2) Identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities;

(3) Verify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed and at least once each calendar year, but at intervals not to exceed 15 months;

(4) Review the alarm management plan required by this paragraph at least once each calendar year, but at intervals not exceeding 15 months, to determine the effectiveness of the plan;

(5) Monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not exceeding 15 months, that will assure controllers have sufficient time to analyze and react to incoming alarms; and

(6) Address deficiencies identified through the implementation of paragraphs (e)(1) through (e)(5) of this section.

(f) *Change management.* Each operator must assure that changes that could affect control room operations are coordinated with the control room

personnel by performing each of the following:

(1) Implement section 7 of API RP 1168 (incorporated by reference, see § 195.3) for control room management change and require coordination between control room representatives, operator's management, and associated field personnel when planning and implementing physical changes to pipeline equipment or configuration; and

(2) Require its field personnel to contact the control room when emergency conditions exist and when making field changes that affect control room operations.

(g) *Operating experience.* Each operator must assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures by performing each of the following:

(1) Review accidents that must be reported pursuant to § 195.50 and 195.52 to determine if control room actions contributed to the event and, if so, correct, where necessary, deficiencies related to:

(i) Controller fatigue;

(ii) Field equipment;

(iii) The operation of any relief device;

(iv) Procedures;

(v) SCADA system configuration; and

(vi) SCADA system performance.

(2) Include lessons learned from the operator's experience in the training program required by this section.

(h) *Training.* Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements:

(1) Responding to abnormal operating conditions likely to occur simultaneously or in sequence;

(2) Use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions;

(3) Training controllers on their responsibilities for communication under the operator's emergency response procedures;

(4) Training that will provide a controller a working knowledge of the pipeline system, especially during the development of abnormal operating conditions; and

(5) For pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application.

(i) *Compliance validation.* Upon request, operators must submit their procedures to PHMSA or, in the case of an intrastate pipeline facility regulated by a State, to the appropriate State agency.

(j) *Compliance and deviations.* An operator must maintain for review during inspection:

(1) Records that demonstrate compliance with the requirements of this section; and

(2) Documentation to demonstrate that any deviation from the procedures required by this section was necessary for the safe operation of the pipeline facility.

Issued in Washington, DC, on November 20, 2009 under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. E9–28469 Filed 12–2–09; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register

Vol. 74, No. 231

Thursday, December 3, 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–2009–1111; Directorate Identifier 2009–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: During an elevator Power Control Unit (PCU) Centering Functional Check on two CL–600–2C10 aircraft, sustained oscillations were discovered when a control rod was disconnected. These sustained oscillations could render the elevator surface inoperable and cause subsequent loss of pitch control of the aircraft.

Loss of pitch control could result in reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 19, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

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–2009–1111; Directorate Identifier 2009–NM–147–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–28, issued June 29, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During an elevator Power Control Unit (PCU) Centering Functional Check on two CL–600–2C10 aircraft, sustained oscillations were discovered when a control rod was disconnected. These sustained oscillations could render the elevator surface inoperable and cause subsequent loss of pitch control of the aircraft.
>
> This directive mandates incorporation of a new centering mechanism on the elevator torque tube to prevent these sustained oscillations.

Loss of pitch control could result in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–27–042, Revision B, dated June 2, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of 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.

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 about 260 products of U.S. registry. We also estimate that it would take about 35 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 about $27,626 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 $7,910,760, or $30,426 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:

Bombardier, Inc. (formerly Canadair): Docket No. FAA–2009–1111; Directorate Identifier 2009–NM–147–AD.

Comments Due Date

(a) We must receive comments by January 19, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Bombardier, Inc., airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes having serial numbers 10003 through 10259 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and Model CL–600–2D24 (Regional Jet Series 900) airplanes having serial numbers 15001 through 15099 inclusive.

Subject

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

Reason

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

During an elevator Power Control Unit (PCU) Centering Functional Check on two CL–600–2C10 aircraft, sustained oscillations were discovered when a control rod was disconnected. These sustained oscillations could render the elevator surface inoperable and cause subsequent loss of pitch control of the aircraft.

This directive mandates incorporation of a new centering mechanism on the elevator torque tube to prevent these sustained oscillations.

Loss of pitch control could result in reduced controllability of the airplane.

Actions and Compliance

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

(1) Within 6,000 flight hours after the effective date of this AD, install a new PCU centering mechanism, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–042, Revision B, dated June 2, 2009.

(2) Incorporation of Bombardier Service Bulletin 670BA–27–042, dated October 14, 2008; or Revision A, dated January 8, 2009; before the effective date of this AD, is considered acceptable for compliance with this AD only if Bombardier Repair Engineering Order (REO) 670–27–31–001, dated January 12, 2009; or Bombardier Service Non-Incorporated Engineering Order (SNIEO) S01 or S02 from Bombardier Kit Drawing KBA670–93702, Revision C, dated January 28, 2009; is incorporated at the same time.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531.

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 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to Canadian Airworthiness Directive CF–2009–28, issued June 29, 2009; and Bombardier Service Bulletin 670BA–27–042, Revision B, dated June 2, 2009; for related information.

Issued in Renton, Washington, on November 23, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28859 Filed 12–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1110; Directorate Identifier 2009–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. 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 testing, it was discovered that when the outflow valve (OFV) manual mode connector is not connected, the manual mode motor and altitude limitation are not properly tested. Consequently, a disconnect of the OFV manual mode and/or a related wiring failure could potentially result in a dormant loss of several CPC [cabin pressure control] backup/safety functions, including OFV manual control, altitude limitation, emergency depressurization and smoke clearance.

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

DATES: We must receive comments on this proposed AD by January 19, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.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: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

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–2009–1110; Directorate Identifier 2009–NM–116–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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 May 6, 2009, we issued AD 2009–10–10, Amendment 39–15906 (74 FR 22646, May 14, 2009). That AD required actions intended to address an unsafe condition on the products listed above. AD 2009–10–10 states that the planned compliance times for certain actions (paragraphs (f)(2) and (f)(3) of AD 2009–10–10 allow modification (software update) of the cabin pressure control units and cabin pressure control panels, which constituted optional terminating action for the required inspections) would allow enough time to provide notice and opportunity for prior public comment on the merits of those actions. We now have determined that further rulemaking is necessary to mandate the previously optional actions. This AD follows from that determination.

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.

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 about 353 products of U.S. registry.

The actions that are required by AD 2009–10–10 and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $160 per product.

We estimate that it would take about 3 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $43,000 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 new basic requirements of this proposed AD on U.S. operators to be $15,263,720, or $43,240 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 removing Amendment 39–15906 (74 FR 22646, May 14, 2009) and adding the following new AD:

Bombardier Inc. (Formerly Canadair): Docket No. FAA–2009–1110; Directorate Identifier 2009–NM–116–AD.

Comments Due Date

(a) We must receive comments by January 19, 2010.

Affected ADs

(b) The proposed AD supersedes AD 2009–10–10, Amendment 39–15906.

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, certificated in any category, serial numbers 10003 through 10260 inclusive; and Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, serial numbers 15001 through 15095 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 21: Air Conditioning.

Reason

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

During testing, it was discovered that when the outflow valve (OFV) manual mode connector is not connected, the manual mode motor and altitude limitation are not properly tested. Consequently, a disconnect of the OFV manual mode and/or a related wiring failure could potentially result in a dormant loss of several CPC [cabin pressure control] backup/safety functions, including OFV manual control, altitude limitation, emergency depressurization and smoke clearance. This deficiency is applicable to CPC units, Part Number (P/N) GG670–98002–3 and –5, and CPCP [cabin pressure control panel], Part Number GG670–98001–5, –7 and –9.

This directive mandates an interim repetitive check of the OFV manual mode motor and altitude limitation functions, followed by modification (software update) of the CPC units and the CPCP.

The corrective action for findings of improper OFV manual mode motor and altitude limitation functions is replacing the valve with a new or serviceable valve.

Restatement of Requirements of AD 2009–10–10

Actions and Compliance

(f) Unless already done, do the following actions. Within 450 flight hours after May 29, 2009 (the effective date of AD 2009–10–10), inspect the OFV for proper operation of the manual mode motor and altitude limitation functions, in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006 (''the service bulletin''). If the OFV manual mode motor or altitude limitation functions do not operate properly, before further flight, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 450 flight hours. Accomplishing the actions specified in

paragraph (g) of this AD terminates the requirements of this paragraph.

(1) Make sure that the electrical connectors, MPE23P1 and MPE23P2, are connected to the OFV.

(2) Repeat the inspection of the OFV for proper operation of the manual mode motor and altitude limitation functions, in accordance with Part A of the service bulletin. If the OFV manual mode motor or altitude limitation functions do not operate properly, before further flight, replace the OFV with a new or serviceable valve in accordance with Tasks 21–32–01–000–801 and 21–32–01–400–801 of the Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B–001, Part 2, Volume 1, Revision 28, dated January 20, 2009, and do the inspection of the OFV specified in paragraph (f) of this AD.

New Requirements of This AD

Actions and Compliance

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

(1) Prior to accomplishing paragraph (g)(2) of this AD: Install modified or new CPC units, part number GG670–98002–7, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006.

(2) Within 4,500 flight hours after the effective date of this AD: Install modified or new CPCPs, part number GG670–98001–11, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006. Doing the actions required by paragraph (g)(2) of this AD terminates the requirements of paragraph (f) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI and Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006, do not describe corrective actions for findings of improper OFV manual mode motor and altitude limitation functions. This AD requires the actions in paragraphs (f)(1) and (f)(2) of this AD, which include replacing the valve if the OFV manual mode motor or altitude limitation functions do not operate properly.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. 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.

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

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

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–08, dated March 9, 2009; Bombardier Alert Service Bulletin A670BA–21–022, dated August 3, 2006; and Tasks 21–32–01–000–801 and 21–32–01–400–801 of the Bombardier CRJ Regional Jet Series Aircraft Maintenance Manual, CSP B–001, Part 2, Volume 1, Revision 28, dated January 20, 2009; for related information.

Issued in Renton, Washington, on November 19, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–28856 Filed 12–2–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215–AB75

Trust Annual Reports

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Notice of proposed extension of filing due date.

SUMMARY: This proposed rule seeks public comment on a proposal to delay the filing due date of the Form T–1, Trust Annual Report. The Form T–1 is an annual financial disclosure report to be filed, pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA), by labor unions with total annual receipts of $250,000 or more about certain trusts in which they are interested. Labor unions would use the Form T–1 to disclose financial information about the trusts, such as assets, liabilities, receipts, and disbursements. The Department established the Form T–1 with a final rule published on October 2, 2008, 73 FR 57412 (Oct. 2, 2008), with an effective date of January 1, 2009. Subsequently, the Department announced its intention to propose withdrawal of the Form T–1 (Spring 2009 Regulatory Agenda). The Department held a public meeting on July 21, 2009, and received comments from interested parties concerning provisions of the Form T–1 and its proposed rescission. The Department now seeks comments on a proposal to delay the filing due date of the initial Form T–1 reports, pending the outcome of the Department's proposal to withdraw the October 2, 2008 rule.

DATES: This proposed rule proposes to delay for one calendar year the filing due dates for Form T–1 reports required to be filed during calendar year 2010. The comment period on this proposal will close on December 14, 2009.

ADDRESSES: You may submit comments, identified by RIN 1215–AB75, only by the following methods:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov*. To locate the proposed rule, use key words such as ''Labor-Management Standards'' or ''Trust Annual Reports'' to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Delivery: Comments should be sent to: Denise M. Boucher, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD). Only those comments submitted through *http://www.regulations.gov*, hand-delivered, or mailed will be accepted. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S.

Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: On October 2, 2008, the Department of Labor, Office of Labor-Management Standards (OLMS), published a Final Rule establishing the Form T–1, Trust Annual Report. 73 FR 57411. The Form T–1 is an annual financial disclosure report to be filed by labor unions about certain trusts in which they are interested. For an organization or fund to be a labor union's trust subject to Form T–1 reporting, it must be established by the labor union or have a governing body that includes at least one member appointed or selected by the labor union, and a primary purpose of the trust must be to provide benefits to the members of the labor union or their beneficiaries. Examples of such trusts include building and redevelopment corporations, educational institutes, credit unions, labor union and employer joint funds, and job targeting funds. Labor unions currently are required to disclose financial information about the trust, such as assets, liabilities, receipts and disbursements through use of Form T–1.

Labor unions with total annual receipts of $250,000 or more (those required to file Form LM–2, Labor Organization Annual Report) are required to file the Form T–1 report. A labor union must file a Form T–1 report for each trust where the labor union, alone or in combination with other labor unions, appoints or selects a majority of the members of the trust's governing board or the labor union's contribution to the trust, alone or in combination with other labor unions, represents more than 50% of the trust's receipts. Contributions by an employer under a collective bargaining agreement are considered contributions by the labor union.

The Form T–1 rule also provides that unions will not be required to file a Form T–1 under certain circumstances, such as when the trust is a political action committee, if publicly available reports on the committee are filed with appropriate Federal or State agencies; an independent audit has been conducted for the trust, in accordance with standards set forth in the final rule; or the trust is required to file a Form 5500 with the Employee Benefits Security Administration (EBSA).

The Form T–1 final rule took effect on January 1, 2009. Filing due dates depend on the fiscal year ending dates of both the reporting union and the trust being reported. The fiscal year of both the labor union and its trust must begin on or after January 1, 2009, for a Form T–1 report to be owed, and the labor union must file any owed Form T–1 report within 90 days of the close of its own fiscal year. The earliest Form T–1 reports are required of unions that have, and whose trusts have, a fiscal year start date of January 1, 2009. These first Form T–1 reports are therefore due on or after January 1, 2010, but no later than March 31, 2010.

In the Spring 2009 Regulatory Agenda, the Department notified the public of its intent to initiate rulemaking proposing to rescind the Form T–1 and to require reporting of wholly owned, wholly controlled, and wholly financed (''subsidiary'') organizations on their Form LM–2 or LM–3 reports. See *http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75*. Additionally, the Department held a public meeting on July 21, 2009, which allowed interested parties to comment on any aspect of the Form T–1. A draft proposed rule to withdraw the October 2, 2008 Form T–1 rule is currently under review by the Administration.

In view of its plan to propose rescission of the Form T–1 Trust Annual Report, the Department now proposes to extend the filing due dates of Form T–1 reports that would otherwise be due in 2010, pending review and consideration of comments on the proposal to rescind. Extension of the filing due dates will delay or eliminate the first year recurring and nonrecurring burdens on labor organizations associated with the reporting requirements of the Form T–1 rule, pending the outcome of the proposed withdrawal. Without this proposal to delay the filing date of the initial Form T–1 reports, many affected labor organizations likely will incur the reporting costs and burdens associated with filing the form, including the nonrecurring first year costs and burdens associated with implementing the reporting system for the Form T–1. In particular, the October 2, 2008 rule estimated that unions would incur 41.20 hours in reporting burden per Form T–1 filed during the first year of the rule's implementation, for a total first year reporting burden of 128,978.11 hours. The estimated reporting cost per form filed in the first year is $1,632.41, and the estimated reporting cost in the first year for all projected Form T–1 filings is $5,110,324.80. The Department notes that the first year burden is higher than that in later years, which is estimated to be 28.28 hours per form filed and 88,542.01 hours total. 73 FR 57444–5. If the proposal to rescind the rule ultimately is effectuated, these expenses, including upfront costs, will have been incurred unnecessarily.

This proposal to delay the filing dates for Form T–1 reports due in 2010 would not affect the filing due date of Form T–1 reports that would be owed in any subsequent year. The Department's proposal would not extend the filing due date of any Form T–1 report that normally would be due during calendar year 2011 or beyond. Further, in the event that the Department determines to retain the Form T–1 rule, the initial Form T–1 reports that would have been due during 2010 must be filed in 2011, in addition to those Form T–1 reports normally due in 2011.

For the foregoing reasons, the Department has determined to propose delay of the filing dates of Form T–1 reports due during calendar year 2010 and seeks comment on this proposal.

John Lund,

Director, Office of Labor-Management Standards.

[FR Doc. E9–28780 Filed 12–2–09; 8:45 am]

BILLING CODE 4510–CP–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2480; MB Docket No. 09–210; RM–11583]

Television Broadcasting Services; Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed Ketchikan TV, LLC (''Ketchikan''), the permittee of KDMD(TV), channel 32, Anchorage, Alaska. Ketchikan requests the substitution of channel 33 for channel 32 at Anchorage.

DATES: Comments must be filed on or before December 18, 2009, and reply comments on or before December 28, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: James M. Talens, Esq., 6017 Woodley Road, McLean, VA 22101.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–210, adopted November 24, 2009, and released November 25, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Alaska, is amended by adding channel 33 and removing channel 32 at Anchorage.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. E9–28986 Filed 12–2–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2009–0081; MO 922105 0082–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List Sprague's Pipit as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list Sprague's pipit (*Anthus spragueii*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the Sprague's pipit may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before February 1, 2010. After this date, you must submit information directly to the North Dakota Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket FWS–R6–ES–2009–0081 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2009–0081; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Jeffrey K. Towner, Field Supervisor, North Dakota Field Office, 3425 Miriam Avenue, Bismarck, North Dakota 58501–7926, telephone (701) 250–4481, extension 508. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on Sprague's pipit from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species or its habitat.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which 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; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing the Sprague's pipit is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the Sprague's pipit, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species'';

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on ''specific areas outside the geographical area occupied by the species'' that are ''essential to the conservation of the species.'' Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 3(5)(A) and section 4(b) of the Act.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding will be available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, North Dakota Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information contained in the petition, supporting information submitted with the petition, and information otherwise readily available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our 12-month finding.

Petition History

On October 10, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians (hereinafter referred to as the ''petitioner'') requesting that the Sprague's pipit be listed as endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required at 50 CFR 424.14(a). In a December 5, 2008, letter to the petitioner, we responded that we had reviewed the petition and determined that an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we had received a draft budget allocation to complete the 90-day finding for this species in Fiscal Year 2009. On January 28, 2009, we received a 60-day Notice of Intent (NOI) to sue from the petitioner stating that the Service was in violation of the Act by failing to take action under section 4(b)(3)(A) of the Act. On August 20, 2009, the petitioner filed a complaint on the Service's failure to complete the 90-day finding. This finding addresses the October 10, 2008, petition.

Previous Federal Actions

There have been no previous Federal actions concerning this species.

Species Information

The Sprague's pipit is a small passerine of the family Motacillidae that is endemic to the Northern Great Plains (Robbins and Dale 1999, p. 1). The genus *Anthus* contains over 21 species. It is one of the few endemic birds of the North American grasslands. The Sprague's pipit is about 10–15 centimeters (cm) (3.9–5.9 inches (in.)) in length, and weighs 22–26 grams (g) (0.8–0.9 ounce (oz)), with buff and blackish streaking on the crown, nape, and underparts. It has a plain buffy face with a large eye-ring. The bill is relatively short, slender, and straight, with a blackish upper mandible. The lower mandible is pale with a blackish tip. The wings and tail have two indistinct wing-bars, and the outer retrices (tail feathers) are mostly white (Robbins and Dale 1999, p. 3–4). Juveniles are slightly smaller, but similar to adults, with black spotting rather than streaking (Robbins and Dale 1999, p. 3).

Sprague's pipits are generally ground feeders, eating primarily arthropods, although they may feed on seeds during migration and the wintering period (Audubon 2007, p. 3). When flushed, they have an undulating flight. The males have a territorial flight display that can last up to 3 hours (Robbins and Dale 1999, p. 22).

The nest is generally constructed in dense, relatively tall grass with a low forb density and little bare ground (Sutter 1997, p. 462). The nest is usually dome shaped. It is constructed from woven grasses and is generally at the end of a covered, sharply curved runway up to 15 cm (5.9 in.) long which may serve as heat-stress protection (Sutter 1997, p. 467; Dechant *et al.* 2003, p. 2). The female lays four to five eggs (Wells 2007, p. 297), which she incubates for 11 to 17 days. It is thought that females do most or all of the incubation (Sutter *et al.* 1996, p. 695), but both parents may feed the young (Wells 2007, p. 297). Parental care may continue well past fledging (Sutter *et al.* 1996, p. 695). The female will renest if

the first nest fails and some females have been documented to double brood (Sutter *et al.* 1996, p. 694). However, long intervals between nesting attempts suggest that the breeding pairs produce an average of only 1.5 clutches per year (Sutter *et al.* 1996, p. 694).

During the breeding season, Sprague's pipits prefer large patches of native grassland with a minimum size of approximately 72 acres (29 hectares) (Davis 2004, pp. 1130, 1134–1135). They are much less common or not present in areas with introduced grasses than in areas containing native prairie (Madden 1996, p. 104). Nests are located in areas with relatively tall, dense cover (Dieni and Jones 2003, p. 392), dominated by grasses and sedges (Sutter 1997, p. 464). They will use nonnative replanted grassland if the vegetative structure is suitable, but strongly prefer native prairie (Dechant *et al.* 2003, pp. 1, 4). The species prefers to breed in well-drained open grasslands, and avoids grasslands that contain even low densities of shrubs (Wells 2007, p. 297). Sprague's pipits can be found in light to moderately grazed areas (Dechant *et al.* 2003, p. 4), but in North Dakota, a greater abundance of Sprague's pipits have been reported from moderately to heavily grazed areas (Kantrud 1981, p. 414). However, these descriptions are relative; vegetation described as lightly grazed in one study may be called heavily grazed in another (Madden *et al.* 2000, p. 388). The species is rarely found in cultivated areas (Owens and Myres 1973, p. 705). They appear to avoid roads, presumably because the ditches are often replanted with non-native species (Sutter et al. 2000, p. 114). Migration and wintering ecology are poorly known, but migrating and wintering Sprague's pipits are found in grassland, pastures, and fallow cropland (Wells 2007, p. 297).

The native prairie habitat that Sprague's pipits use is disturbance dependant. Without disturbance (historically grazing by bison or fire, today more often grazing by cattle or mowing for hay), the species mix changes and grasslands are ultimately overgrown with woody vegetation (Grant *et al.* 2002, p. 808). While Sprague's pipits prefer areas that are regularly disturbed (Madden 1996, p. 48), their preference for vegetation of intermediate height means that they will not use a mowed or burned area until the vegetation has had a chance to grow which may be late in the following breeding season (Dechant et al. 2003, pp. 1–2. Kantrud 1981, p. 414).

Historic and Current Distribution

The species was described as abundant in the late 1800's (Coues 1874, p. 42; Seton 1890, p. 626). Currently in the United States, Sprague's pipits breed throughout North Dakota, except for the easternmost counties; in northern and central Montana east of the Rocky Mountains; in northern portions of South Dakota; and in northeastern Minnesota. In Canada, Sprague's pipits breed in southeastern Alberta, the southern half of Saskatchewan, and in southwest Manitoba. Their wintering range includes south-central and southeast Arizona, Texas, southern Oklahoma, southern Arkansas, northwest Mississippi, southern Louisiana, and northern Mexico. There have been sightings in Michigan, western Ontario, Ohio, Massachusetts, and Gulf and Atlantic States from Mississippi east and north to South Carolina. Sprague's pipits have also been sighted in California during fall migration (Robbins and Dale 1999, p. 6).

Sprague's pipit is included on a number of Federal, State, and nongovernmental organization lists as a sensitive species. For example, its status is listed as vulnerable on the International Union of Conservation Networks Red List (International Union of Conservation Networks 2008). It has a NatureServe Global Rank of G4, indicating that the population is apparently secure (NatureServe 2008). The species is ranked as yellow on the Audubon 2007 watch list, indicating that it is ''either declining or rare. These typically are species of national conservation concern'' (Audubon 2007, p. 2). Partners in Flight also has placed Sprague's pipit on its yellow list, indicating that the species is a species of conservation concern at the global scale, a species in need of management action, and a high priority candidate for rapid status assessment (Rich *et al.* 2004).

The petitioner reported that several States have identified the Sprague's pipit in various rankings indicating that it is sensitive including: Arizona (species of greatest conservation need), Minnesota (endangered), Montana (species of concern), New Mexico (species of greatest conservation need, vulnerable), North Dakota (Level I species in greatest need of conservation), and South Dakota (Level III—modest conservation priority but low abundance score) (WildEarth Guardians 2008, pp. 31–32).

Due to its cryptic coloring and secretive nature, the Sprague's pipit has been described as ''one of the least known birds in North America'' (Robbins and Dale 1999, p. 1), and specific range-wide surveys for the species have not been conducted. However, long-term estimates of Sprague's pipit abundance have come from the Breeding Bird Survey (BBS), a long-term, large-scale survey of North American birds that began in 1966. The BBS is generally conducted by observers driving along set routes, stopping every half-mile to sample for birds. Since there is some evidence that Sprague's pipits avoid roads (Sutter *et al.* 2000, p. 114), roadside surveys may not be the best measure of abundance of Sprague's pipits. Nonetheless, the methods of the BBS have been consistent through time, and the BBS provides the best available trend information at this time. The available information suggests that the population is in steep decline (Peterjohn and Sauer 1999, p. 32), with a 79 percent decrease from 1966 through 2005 rangewide (approximately 4.1 percent annually) (Wells 2007, p. 296).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, 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: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to the Sprague's pipit, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

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

Information Provided in the Petition

The petition outlines numerous assertions regarding the present or threatened destruction, modification, or curtailment of the Sprague's pipit's habitat or range, including:

(1) The loss of native prairie throughout the Northern Great Plains range of the species as a result of agricultural conversion, invasion of exotic plants, haying practices, livestock grazing, and fire suppression;

(2) Changes in prairie management since European colonization that have allowed shrub, tree, and weed encroachment throughout the prairie;

(3) The infrastructure associated with oil and gas exploration and extraction;

(4) The proliferation of roads throughout the Sprague's pipit's range, which reduce the amount of suitable habitat available for their use; and

(5) Ongoing fragmentation of prairie habitat that may leave grassland areas too small for Sprague's pipit use.

Response

We generally find that the information presented by the petitioner appears to be reliable and substantial in regard to the amount of habitat modification and alteration that has occurred within the range of the Sprague's pipit. Sprague's pipits do not nest in cropland (Owens and Myres 1973, p. 697; Wells 2007, p. 297), so widespread conversion from prairie to cropland negatively impacts the species because it reduces the amount of habitat available for nesting. Between 2006 and 2007 alone, as corn prices increased by more than one dollar a bushel, approximately 15 million additional acres (6 million hectares) were planted in corn in the United States, although this was not necessarily all newly plowed areas and not all within the range of the Sprague's pipit (U.S. Department of Agriculture 2009, p. 2).

Land cover images of the Great Plains in the United States and Canada indicate that only 30 percent of prairie habitat remains from pre-colonial times (Samson *et al.* 2004, p. 7); this remnant prairie habitat is not all necessarily located within the range of the Sprague's pipit. Although Sprague's pipit will use nonnative replanted grassland under some circumstances (Higgins *et al.* 2002, pp. 46–47; Dechant *et al.* 2003, p. 3), the species is generally closely associated with native prairie (Owens and Myres 1973, p. 705; Davis 2004, pp. 1138–1139; McMaster *et al.* 2005, p. 219).

Sprague's pipits are strongly tied to native prairie (land which has never been plowed) (Owens and Myres 1973, p. 708), in general avoiding cropland and land in the Conservation Reserve Program (a program whereby marginal farmland is replanted with grass) (Higgins *et al.* 2002, pp. 46–47). However, it is not clear that they avoid areas with exotic plant species. While Sprague's pipits appear to favor large grassland areas, vegetation structure is a better predictor than species composition of songbird occurrence (Davis 2004, pp. 1135, 1137). Other studies also have suggested that the vegetation structure, rather than its specific composition, may influence which species are present (Naugle *et al.* 2000, p. 2; Ribic *et al.* 2009, p. 239).

Even in areas that remain in native prairie, management changes, including fencing, augmentation of water sources, replacing bison with cattle as the primary herbivore, and fire suppression, all have changed the landscape (Knopf 1994, pp. 248–250; Weltzin *et al.* 1997, pp. 758–760). Much of the prairie is now grazed more uniformly and is often overgrazed, leading to a decline in species diversity and an increase in woody structure (Walker *et al.* 1981, pp. 478–481; Towne *et al.* 2005, pp. 1550–1558). Fire suppression has allowed suites of plants, especially woody species, to flourish, especially in the winter range (Knopf 1994, p. 251; Samson *et al.* 1998, p. 11). These changes have led to steep declines in many grassland bird species, including the Sprague's pipit (Knopf 1994, pp. 251–254; Grant *et al.* 2004, p. 812; Lueders *et al.* 2006, pp. 602–604).

It should be noted that substituting cattle for bison alone does not necessarily lead to a change in grassland vegetation. In a study comparing native prairie stocked with moderate levels of cattle or bison, Towne *et al.* (2005, pp. 1552–1558) found that while there were some differences in the grazing habits of the two species, after 10 years the diversity and plant density in the two areas were similar. They suggest that the vegetation differences many studies find between cattle and bison are due to different herd management and grazing intensity, rather than an inherent difference in the effect of the two herbivores on vegetation. Ranchers currently allow cattle to graze at high densities compared to the historic grazing densities of bison, which could lead to a greater probability of overgrazing in grasslands. However, one study (Lueders *et al.* 2006, p. 602) found that Sprague's pipits were more common on areas grazed by cattle. The management regimes (*i.e.,* fire regimes, grazing densities) and sampling intensities of studies conducted on the two areas were quite disparate, precluding firm conclusions.

Fire suppression since European settlement throughout the Sprague's pipit's range has impacted the composition and structure of native prairie, favoring the incursion of trees and shrubs in areas that were previously grassland (Knopf 1994, p. 251). This change of structure negatively impacts Sprague's pipits, which avoid grasslands containing even moderate densities of shrubs (Wells 2007, p. 297). Fire and grazing may differentially affect the vegetative species composition of grasslands, so eliminating fire from the landscape has likely changed the overall composition of the prairie. Trees and shrubs can be eliminated through grazing or regular mowing, although these management practices may result in selection for yet a different suite of grassland plant species (Owens and Myres 1973, pp. 700–701).

Mowing (*i.e.* haying) in the breeding range could negatively impact Sprague's pipits by directly destroying nests, eggs, nestlings, and young fledglings, and by reducing the amount of available nesting habitat for a certain amount of time. While Sprague's pipits occasionally will renest if the first nest fails or if nestlings from the first clutch fledge early enough in the season, long intervals between nesting attempts suggest that renesting is relatively uncommon (Sutter *et al.* 1996, p. 694). Thus, early mowing can negatively impact reproductive success for the year. Even mowing done later in the season after nests have hatched may impact the availability of breeding habitat the following year, because Sprague's pipits will not use areas with short grass until later in the season when the grass has grown (Owens and Myres 1973, p. 708; Kantrud 1981, p. 414). On the other hand, as noted above, mowing can improve Sprague's pipit habitat in the long term by removing trees and shrubs (Owens and Myres 1973, p. 700). Nest success of ground-nesting birds is already low, with an estimated 70 percent of nests destroyed by predators (cited in Davis 2003, p. 119). In addition to nest and egg loss due to predation, some Sprague's pipit nests are parasitized by brown-headed cowbirds (*Molothrus ater*) dropping the percent of successful nests even further (Davis 1994, p. 15; Peterjohn and Sauer 1999, p. 39).

In the United States, approximately 5 percent of Sprague's pipit breeding, migratory, and wintering range (not including Texas for which data are not available) is encroached on by oil and gas wells or active leases (WildEarth Guardians 2008, p. 20). Much of the Sprague's pipit's breeding range overlaps with major areas of oil production in Montana and North Dakota. Oil production spiked in 2007 (the most recent year for which this information is available), with 494 drilling permits issued in 2007 in North

Dakota, compared with only 146 permits issued in 2006 (North Dakota Petroleum Council 2008). Sprague's pipits have shown avoidance of oil wells up to 300 meters (984 feet) (Linnen 2008, pp. 1, 9–11), so wells, especially at high density, may decrease the amount of habitat available for nesting.

Each well pad requires associated new road construction, often involving several miles (kilometers) of new road for each pad. Several researchers have noted that Sprague's pipits avoid roadsides (Sutter *et al.* 2000, p. 114; Linnen 2006, pp. 1, 6–9; Linnen 2008, pp. 9–13). This observed avoidance may be due to the shortness of mowed vegetation, or the reduction of suitable vegetation along the right-of-way (Sutter *et al.* 2000, p. 114).

Birds that nest near a habitat edge, such as a road, may experience lower nest success because they may be more likely to be parasitized by cowbirds (Davis 1994, p. i) and because roads may serve as travel routes for predators (Pitman *et al.* 2005, p. 1267). Roads enable the spread of exotic species as propagules can be inadvertently transported along roads while the ground disturbance provides sites where they can readily germinate (Trombulak and Frissell 2000, p. 24; Simmers 2006, p. 7). Furthermore, the dust and chemical runoff from roads selects for tolerant species to grow nearby, changing the plant composition even if the right-of-way was not actually disturbed and reseeded (Trombulak and Frissell 2000, p. 23). Simmers (2006, p. 24) found that even 20 years after reclamation, the nonnative seeds generally used on the reclaimed roadbed were still dominant in the area. Furthermore, these nonnatives spread into the nearby prairie, suggesting long-term impacts of road construction extending beyond the original footprint of the roadway (Simmers 2006, p. 24).

Wind energy development has been exponentially increasing in recent years, with increases of more than 45 percent in 2007 and more than 50 percent in 2008 (Manville 2009, p. 1). Like oil, wind projects may fragment the native habitat with turbines, roads, transmission infrastructure, and associated facilities. A recent white paper examining the potential impacts of the wind industry on fish and wildlife determined that wind farms may adversely impact grassland songbirds, a group that is already in decline (Casey 2005, p. 4, Manville 2009, p. 1). Several of the States where the Sprague's pipit nests or winters are listed in the top 20 States for wind energy potential (American Wind Energy Association 1991).

Sprague's pipits appear to be area sensitive, preferring larger grassland patches, although the exact amount of habitat required is not known (Davis 2004, pp. 1135–1139). Davis (2004, p. 1139) found that the strongest predictor of Sprague's pipit presence was the amount of grassland within an 800-meter (2,500-foot) radius circle. An increase in all of the factors discussed above (*i.e.,* cropland, trees and shrubs, oil and gas facilities, and roads) may negatively influence Sprague's pipits' use of an area.

Summary of Factor A

Sprague's pipits have undergone a sharp decline in the past 50 years as much of the once vast prairie habitat has been converted to other uses. One of the major causes of decline seems to be the loss of native grassland habitat throughout the species' range. On the basis of our evaluation, we determined that the petition presents substantial information that listing the Sprague's pipit as a threatened or endangered species may be warranted due to present or threatened destruction, modification, or curtailment of its habitat or range.

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

Information Provided in the Petition

The petitioner asserts that there is no evidence that overutilization for commercial, recreational, scientific, or educational purposes is a threat at this time.

Response

As noted above, Sprague's pipit has not been extensively studied for scientific purposes (*e.g.,* Robbins and Dale 1999). A review of the literature provided in the petition or readily available in our files suggests that while a limited number of studies involve close observation or handling of Sprague's pipit adults, nests, or young (*e.g.,* Sutter *et al.* 1996, pp. 694–696; Davis 2003, pp. 119–128; Dieni and Jones 2003, pp. 388–389), most research that includes the Sprague's pipit relies on passive sampling (*i.e.,* point counts) rather than active manipulation. Such passive sampling is unlikely to have negative impacts on Sprague's pipits.

Summary of Factor B

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Sprague's pipit as a threatened or endangered species may be warranted due to the overutilization for commercial, recreational, scientific, or educational purposes. Additionally, we do not have substantial information in our files to suggest that overutilization for commercial, recreational, scientific, or educational purposes may threaten the Sprague's pipit. However, we will evaluate all factors, including threats from overutilization for commercial, recreational, scientific, or educational purposes, when we conduct our status review.

C. Disease and Predation

Information Provided in the Petition

(1) The petitioner asserts that while disease does not appear to be a major threat at this time, it may become a threat due to changes in habitat distribution resulting from climate change and ensuing concentration of birds.

(2) The petitioner asserts that predation and cowbird nest parasitism cause up to 70 percent of grassland bird nest failures, including nest failures of Sprague's pipits. Cowbird parasitism may be generally lower for Sprague's pipits than for other grassland birds because of Sprague's pipit's tendency to avoid edge habitat. However, if Sprague's pipits are forced to use more edge habitat due to habitat fragmentation, cowbird parasitism may increase in the future.

Response

We are not aware of information to indicate that disease poses a significant threat to Sprague's pipits at this time. The petitioner suggests that botulism may pose a risk if habitat fragmentation and climate change cause birds to be more concentrated on the remaining habitat. While habitat fragmentation may negatively impact Sprague's pipit as discussed in Factor A, botulism is primarily associated with waterfowl (United States Geological Survey 1999, p. 274), and so would not be expected to impact Sprague's pipit. Other diseases, such as avian influenza and West Nile virus may impact the Sprague's pipit, but we are not aware of any information indicating that those diseases pose a risk at this time.

The Intergovernmental Panel on Climate Change (2007, p. 51) suggests that the distribution of some disease vectors may change as a result of climate change. However, the Service has no information at this time to suggest that any specific disease may become problematic to Sprague's pipit.

Predation is thought to destroy up to 70 percent of grassland bird nests (in Davis 2003, p. 119). We assume that the

predation rate of Sprague's pipits is similar. The species' tendency to choose taller vegetation and to build a covered nest with a runway presumably is at least in part an attempt to avoid being seen by predators (Sutter 1997, p. 467). Cowbird parasitism also leads to nest failures, because the cowbirds remove or damage host eggs and cowbird young outcompete the hosts for resources (Davis 2003, pp. 119, 127). Cowbird parasitism generally is thought to be higher in small remnant grassland plots near habitat edges (Davis 1994, p. i; *in* Linnen 2008, p. 4), so the Sprague's pipit's preference for larger tracts of grassland, when these are available, may make the species less susceptible to cowbird parasitism. However, continued loss and fragmentation of native grassland may be causing increased levels of cowbird parasitism that is as yet undetected.

Summary of Factor C

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Sprague's pipit as a threatened or endangered species may be warranted due to disease or predation. While the level of predation for all grassland birds is high, we do not have information at this time to suggest that predation or cowbird parasitism is impacting Sprague's pipits at a level that threatens the species. Because Sprague's pipits select large grassland patches for nesting, they may be less susceptible to cowbird parasitism than other grassland species. Additionally, we do not have substantial information in our files to suggest that disease or predation threaten the Sprague's pipit. However, we will evaluate all factors, including threats from disease and predation, when we conduct our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioner asserts that the regulatory mechanisms to protect the Sprague's pipit in the United States are inadequate.

(1) Sprague's pipits are protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which prohibits hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest or egg thereof, unless specifically permitted (*i.e.*, for waterfowl hunting). The petitioner indicates that the MBTA does not protect bird habitat.

(2) The petitioner reports that Sprague's pipit is listed as a State endangered species in Minnesota, and the Committee on the Status of Endangered Wildlife in Canada listed the Sprague's pipit as a threatened species in 2000. The species is on a number of watch lists from nongovernmental and quasi-governmental (supported by the government but privately managed) organizations. The petitioner states that, while these lists highlight concerns about the species, they do not provide substantial protection. The species enjoys no special protection throughout most of its range.

Response

As the petitioner points out, while the Sprague's pipit is protected under the MBTA, this protection does not extend to the species' habitat. Habitat can be legally destroyed as long as it does not result in the direct take of birds protected by the MBTA.

As discussed under Factor A, a substantial amount of new oil and gas production is occurring in the breeding range of the Sprague's pipit. Currently, no regulatory mechanisms exist for many of these activities to ensure that drilling and associated activities avoid nesting habitat. In addition, we know of no regulatory mechanisms that protect this species' habitat outside of the breeding season.

Similarly, few regulations exist regarding the siting of wind farms in relation to wildlife resources. While the Service has developed interim guidelines for siting wind farms (Service 2003, pp. 1–57) to reduce impacts to wildlife and wildlife habitat, the guidelines are voluntary and are not consistently applied (or applied at all) on private land with no Federal nexus (Manville 2009, p.1). Special permits are required for wind energy development on National Wildlife Refuge System wetland and grassland easements. State permits are not required for wind farms in North Dakota or South Dakota unless they are larger than 100 megawatts, and no State permit is required in Montana (Association of Fish and Wildlife Agencies and U.S. Fish and Wildlife Service 2007). We are aware of no specific requirements in these State regulatory systems that protect migratory birds or their habitats.

As noted in Factor A, favorable market prices often encourage farmers to plow new land for crop production. There are no regulatory mechanisms that govern conversion of native grassland to cropland when migratory birds will be impacted.

Summary of Factor D

On the basis of our evaluation, we find that there is substantial information in the petition and readily available in our files to indicate that listing the Sprague's pipit as a threatened or endangered species may be warranted due to the inadequacy of existing regulatory mechanisms, particularly regarding the effects of habitat loss and fragmentation due to energy development and farming practices.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioner asserts that several other factors may affect the Sprague's pipit's continued existence including the following:

(1) The Sprague's pipit is sensitive to drought throughout its range;

(2) Climate change is likely to increase drought, changing the habitat to make it less suitable for the Sprague's pipit; and

(3) Activities to eradicate and harass birds in croplands, particularly programs to reduce the impacts of blackbirds on sunflower fields, are a threat to the Sprague's pipit.

Response

In a short-term (3-year) study looking at drought and post-drought period in western North Dakota, George *et al.* (1992, pp. 275, 278–279) found that Sprague's pipit numbers declined in periods of drought, although they rebounded once the drought ended. By contrast, a study comparing numbers from the BBS to moisture levels in eastern and northern North Dakota found that Sprague's pipit numbers actually increased during dry periods (Niemuth *et al.* pp. 213–217). However, amount of moisture was a relative descriptor and not constant between studies. There is generally more precipitation in eastern versus western North Dakota (Niemuth *et al.* p. 216), so a dry period in the eastern part of the State may be roughly equivalent to a normal period in the western part.

Sprague's pipits prefer areas with relatively tall grass. Extreme drought may lead to poor grass growth and thus less optimal habitat (Dieni and Jones 2003, pp. 393–395). While the species can increase in abundance after a short-term drought ends, climate change may lead to drier conditions in much of the Sprague's pipit's range (Johnson *et al.* 2005, pp. 869–871), which may have more lasting impacts on the habitat and thus the population (George *et al.* 1992, pp. 281–283).

There is some variability between models in projecting the effect of future climate change on Sprague's pipit habitat. One model projected that the Sprague's pipit's breeding range would experience a wetter climate by the end of this century (United States Global Change Research Program Great Plains 2009, p. 125). In contrast, another model suggested that much of the remaining suitable habitat for Sprague's pipit nesting would likely become drier due to climate change (Johnson *et al.* 2005, p. 871). Temperatures in the wintering range are also expected to rise, while precipitation is projected to decline (United States Global Change Research Program: Southwest 2009, p. 125). Substantial landscape changes are therefore expected in the wintering range (United States Global Change Research Program: Southwest 2009, p. 131). These changes in temperature and precipitation throughout the species' range may have a large impact on ecosystems (United States Global Change Research Program Great Plains 2009, p. 126; United States Global Change Research Program: Southwest 2009, p. 131) and thus the Sprague's pipit.

Long-term effects of global climate change on Sprague's pipit habitat could have significant, deleterious effects, and should be monitored in the future. However, the climate change models are based on projections with some uncertainty (Johnson *et al.* 2005, p. 869), and current data may not be reliable enough at the local level for us to draw conclusions regarding the degree to which climate change would affect Sprague's pipit and its habitat.

The petitioner states that harassment of birds from cropland may negatively impact the birds' energy stores during migration, when they may already be low on reserves (Hagy *et al.* 2007, pp. 62, 69). Also, the petitioner contends that poisoning of sunflower fields with grain bait used to kill blackbirds may impact Sprague's pipits, which have been documented in sunflower fields during migration (Hagy *et al.* 2007, p. 66). Sprague's pipits primarily feed on arthropods, including those in sunflower fields (Hagy *et al.* 2007, p. 66). However, the impacts of harassment and poisoning on Sprague's pipits are unlikely to be substantial. Some sunflower growers harass birds, primarily several species of blackbirds that feed on their crops. Any Sprague's pipits that are present in sunflower fields could be incidentally harassed out of those fields along with blackbirds and any other species present. There have been experimental efforts in the past to selectively poison blackbirds that feed on sunflowers; however, these efforts have been limited to date and not applied on a systematic, widespread basis. Therefore, we deem the potential impacts of harassment and poisoning on Sprague's pipits to be primarily speculative and likely minimal at this time.

Summary of Factor E

We find the information presented in the petition and readily available in our files on the subject of climate change to be insufficiently specific to the Sprague's pipit; however, the Intergovernmental Panel on Climate Change (IPCC) states that warming of the climate is unequivocal (IPCC 2007, p. 15). We intend to investigate the effects of climate change on the Sprague's pipit and its habitat further in the status review for the species.

While all of the following factors may negatively impact the Sprague's pipit, on the basis of our evaluation of the material provided in the petition and available in our files, we determined that the petition does not present substantial evidence indicating that listing the Sprague's pipit may be warranted based on drought, climate change, harassment, or poisoning of cropland.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the Sprague's pipit throughout all or a significant portion of its range may be warranted. This finding is based on information provided under Factors A and D. Because we have found that the petition presents substantial information that listing the Sprague's pipit may be warranted, we are initiating a status review to determine whether listing the Sprague's pipit under the Act is warranted. We will issue a 12-month finding as to whether the petitioned action is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of the Sprague's pipit. You may submit information regarding the Sprague's pipit by one of the methods listed in the **ADDRESSES** section until the date shown in the DATES section of this document. After this date, you must submit information directly to the North Dakota Field Office (**SEE FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date. The petitioner requested we designate critical habitat for this species. If we determine in our 12-month finding that listing the Sprague's pipit is warranted, we will address the designation of critical habitat at the time of the proposed listing rulemaking.

References Cited

A complete list of references cited is available on the Internet at *http://regulations.gov* and upon request from the North Dakota Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the North Dakota Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 19, 2009.

Sam D. Hamilton,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–28868 Filed 12–2–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2008-0111] [MO 92210 50083 B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Black-tailed Prairie Dog as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12–month finding on a petition to list the black-tailed prairie dog (*Cynomys ludovicianus*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the black-tailed prairie dog as either threatened or endangered is not warranted at this time. However, we ask the public to continue to submit to us any new information that becomes available concerning the status of, or threats to, the black-tailed prairie dog or its habitat at any time. This information will help us to monitor and conserve the species.

DATES: The finding announced in this document was made on December 3, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, South Dakota Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, SD 57501; telephone (605) 224-8693. Please submit any new information, materials, comments or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Pete Gober, Field Supervisor, U.S. Fish and Wildlife Service, South Dakota Ecological Services Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Such 12–month findings must be published in the **Federal Register**.

Previous Federal Actions

We received a petition dated October 21, 1994, from the Biodiversity Legal Foundation and Jon C. Sharps, to classify the black-tailed prairie dog as a Category 2 candidate species. Category 2 includes taxa for which information in our possession indicates that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. We reviewed the petition and on May 5, 1995, we concluded that the black-tailed prairie dog did not warrant Category 2 candidate status.

On July 31, 1998, we received a petition from the National Wildlife Federation dated July 30, 1998, to list the black-tailed prairie dog as threatened throughout its range. On August 26, 1998, we received another petition to list the black-tailed prairie dog as threatened throughout its range from the Biodiversity Legal Foundation, Predator Project, and Jon C. Sharps. We accepted this second request as supplemental information to the National Wildlife Federation petition. On February 4, 2000, we announced a 12–month finding that issuing a proposed rule to list the black-tailed prairie dog was warranted but precluded by other higher priority actions (65 FR 5476), and the species was included in the list of candidate species. Two candidate assessments and resubmitted petition findings for the black-tailed prairie dog were completed on October 30, 2001 (66 FR 54303), and June 13, 2002 (67 FR 40657). On August 18, 2004, we completed a resubmitted petition finding for the black-tailed prairie dog (69 FR 51217) concluding that listing the species was not warranted, and the species was removed from the candidate list. This removal was the result of new information regarding the amount of occupied habitat present throughout the species' range and a reevaluation of potential threats. Estimates from the 2004 finding were more accurate than those available during the earlier assessments and indicated nearly 3 times more occupied habitat was present than we originally believed. We concluded that the trends in the amount of occupied habitat did not support listing the species.

On February 7, 2007, Forest Guardians and others filed a complaint challenging the decision to remove the black-tailed prairie dog from the candidate list. On August 6, 2007, we received a formal petition dated August 1, 2007, from Forest Guardians (now WildEarth Guardians), Biodiversity Conservation Alliance, Center for Native Ecosystems, and Rocky Mountain Animal Defense, requesting that we list the black-tailed prairie dog throughout its historical range in Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming and in Canada and Mexico. The petitioners requested that, if the Service believes that *Cynomys ludovicianus arizonensis* is a distinct subspecies or population segment, we list it as threatened or endangered throughout its historical range. The petitioners also requested that the Service designate critical habitat for the species.

The petition clearly identified itself as a petition and included the requisite identification information as required in 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter on August 24, 2007, and indicated that emergency listing of the black-tailed prairie dog was not warranted. We also explained that we would not be able to address their petition until fiscal year 2009, due to existing court orders and settlement agreements for other listing actions. However, in fiscal year 2008, funding became available, and we began work on this petition finding. The plaintiffs withdrew their February 7, 2007, complaint on October 9, 2007.

On March 13, 2008, WildEarth Guardians filed a complaint for failure to complete a 90–day finding on their August 1, 2007, petition. On July 1, 2008, a stipulated settlement and order was signed, in which we agreed to submit a 90–day finding to the **Federal Register** by November 30, 2008, and deliver a 12–month finding to the **Federal Register** by November 30, 2009. We published a 90–day finding for the black-tailed prairie dog in the **Federal Register** on December 2, 2008 (73 FR 73211). Today's notice constitutes the 12–month finding on the August 1, 2007, petition to list the black-tailed prairie dog as threatened or endangered.

Species Information

The black-tailed prairie dog is a member of the *Sciuridae* family, which includes squirrels, chipmunks, marmots, and several species of prairie dogs. Prairie dogs constitute the genus *Cynomys*. Taxonomists currently recognize five species of prairie dogs belonging to two subgenera, all in North America (Hoogland 2006a, pp. 8-9). The white-tailed subgenus, *Leucocrossuromys*, includes Utah (*C. parvidens*), white-tailed (*C. leucurus*), and Gunnison's prairie dogs (*C. gunnisoni*) (Hoogland 2006a, pp. 8-9).

The black-tailed subgenus, *Cynomys*, consists of Mexican (*C. mexicanus*) and black-tailed prairie dogs (Hoogland 2006a, pp. 8-9). Generally, the black-tailed prairie dog occurs east of the other four species in less xeric (dry) habitat (Hall and Kelson 1959, p. 365).

The Utah and Mexican prairie dogs are currently listed as threatened (49 FR 22330, May 29, 1984) and endangered (35 FR 8491, June 2, 1970), respectively. The Gunnison's prairie dog is currently a candidate species within the montane portion of its range (73 FR 6660, February 5, 2008). The Service is considering whether listing is warranted for the white-tailed prairie dog through a formal status review which is due to be submitted to the **Federal Register** by June 1, 2010, under a court-approved settlement agreement.

Research on the evolutionary divergence of the various taxa and populations of *Cynomys* indicates that the black-tailed prairie dog should be considered a monotypic species (a taxonomic group without lower level subdivisions) (Pizzimenti 1975, p. 64). Based on this information, we determined that the black-tailed prairie dog is a valid taxonomic species and a listable entity under the Act.

We also investigated the petitioners' request that we list the subspecies *Cynomys ludovicianus arizonensis* if we found it to be a distinct subspecies. The best available information indicates that *C. l. arizonensis* is not a distinct subspecies (Pizzimenti 1975, p. 64). Pizzimenti (1975, p. 64) researched the evolutionary divergence of the various taxa and populations of *Cynomys* and concluded that the black-tailed prairie dog should be considered a single monotypic species and that further subspecific differentiation was not supported due to the similarity of characteristics between purported subspecies. Later research on the genetic variability within and among populations of black-tailed prairie dogs in New Mexico also concluded that subspecies classification could not be supported (Chesser 1983, p. 326). Therefore, based on currently available information, we conclude that there are no distinct subspecies of black-tailed prairie dog.

The black-tailed prairie dog is a burrowing, colonial mammal that is brown in color (Hoogland 2006a, pp. 8-9). Black-tailed prairie dogs are approximately 12 inches (in) (30 centimeters (cm)) in length and weigh 1 to 3 pounds (lbs) (500 to 1,500 grams (g)) (Hoogland 2006a, pp. 8-9). Key characteristics distinguish the black-tailed prairie dog from other prairie dog species:

(1) It has a longer (2 to 3 in (7-10 cm)) tail that is black-tipped;

(2) It is generally non-hibernating, except possibly in the northern and southern extremes of its range (Tuckwell and Everest 2009, p. 1; Truett *et al.* 2007, p. 10); and

(3) It lives at lower elevations (2,300-7,200 feet (ft) (700-2,200 meters (m))) (Hoogland 2006a, pp. 8-9). Overlap of the geographic ranges of the five species is minimal; consequently, species usually can be identified by locality (Hall and Kelson 1959, p. 365; Hoogland 2006a, pp. 8-9).

The black-tailed prairie dog is typically found in level or gently sloping short- and mixed-grass rangeland, primarily east of the Rocky Mountains (Koford 1958, p. 8). The species is an herbivore, consuming short-grasses such as buffalograss (*Buchloe dactyloides*) and blue grama (*Bouteloua gracilis*) as well as several forb species (Koford 1958, p. 6). Prairie dogs also clip taller forage, without consuming it, to enhance their detection of predators (Hoogland 2006a, p. 15). Numerous species prey on the prairie dog including badger (*Taxidea taxus*), coyote (*Canis latrans*), black-footed ferret (*Mustela nigripes*), golden eagle (*Aquila chrysaetos*), and many other species of raptor (Hoogland 1995, pp. 14-15).

Several biological factors determine the reproductive potential of the black-tailed prairie dog. Females live 4 to 5 years, usually do not breed until their second year, and produce a single litter with an average of three pups annually (Hoogland 2001, p. 917; Hoogland 2006b, p. 29). Therefore, one female may produce zero to 15 young in its lifetime. While the species is not prolific in comparison to many other rodents, it is capable of rapid population increases after population reductions (Collins *et al.* 1984, p. 360; Pauli 2005, p. 17; Reeve and Vosburgh 2006, p. 144).

The colonial nature of prairie dogs, especially the black-tailed prairie dog, is a noteworthy characteristic of the species (Miller *et al.* 1996, p. 20). Historically, black-tailed prairie dogs generally occurred in large complexes, containing multiple colonies that often contained thousands of individuals. These complexes covered hundreds or thousands of acres (ac), and extended for miles (Lantz 1903, p. 2671; Bailey 1905, p. 90; Bailey 1932, p. 122; Ceballos *et al.* 1993, p. 109). Currently, most colonies and complexes are much smaller.

Colonial behavior offers an advantageous defense mechanism by aiding in the detection of predators and by deterring predators through mobbing behavior (Hoogland 1995, pp. 3-6). Colonial behavior also increases reproductive success through cooperative rearing of juveniles and aids parasite removal via shared grooming (Hoogland 1995, pp. 3-6). However, colonial behavior can increase the disadvantageous transmission of disease (Olsen 1981, p. 236; Biggins and Kosoy 2001, p. 911; Antolin *et al.* 2002, p. 122). Plague is a disease that was introduced to North America and can spread from prairie dog to prairie dog through social behaviors such as grooming that transfers fleas carrying the disease. The disease can also be transmitted by pneumonic (airborne) or septicemic (blood) routes (see Threats Analysis, Factor C).

An estimated 2.4 million ac (1 million hectares (ha)) of occupied habitat exists in a constantly shifting mosaic throughout an estimated 283 million ac (115 million ha) of suitable habitat that occurs across a range of approximately 440 million ac (178 million ha). Historically, unsuitable habitat included wetlands, lands with steep slopes, lands with shallow or sandy soils, and wooded areas. More recently, tilled croplands and urban areas have also been considered to be only marginally suitable. Black-tailed prairie dog colonies may expand or contract from year to year (Koford 1958, p. 12). Whether a colony expands or contracts depends on a combination of several factors such as climate, poisoning, disease, and shooting. Prairie dogs may also disperse over considerably long distances and establish new colonies. Dispersal distances up to 6 miles (mi) (10 kilometers (km)) over a period of a few weeks have been documented (Knowles 1985, p. 37). Dispersal can maintain genetic diversity or restore it following plague epizootics (Trudeau *et al.* 2004, p. 206).

The black-tailed prairie dog is considered a keystone species; that is, it is an indicator of diverse species composition within an ecosystem, and key to the persistence of that ecosystem (Kotliar *et al.* 1999, pp.183, 185). The black-footed ferret, swift fox (*Vulpes velox*), golden eagle, and ferruginous hawk (*Buteo regalis*) use prairie dogs as a food source. The mountain plover (*Charadrius montanus*) and burrowing owl (*Athene cunicularia*) use habitat (burrows) created by prairie dogs (Kotliar *et al.* 1999, pp. 181-182). The most obligatory species of this group is the black-footed ferret, which has a clearly documented dependence on the prairie dog (Linder *et al.* 1972, pp. 23-24; Kotliar *et al.* 2006, pp. 55-57). Numerous other species share habitat

with prairie dogs, and rely on them to varying degrees (Kotliar *et al.* 2006, pp. 54-55).

Species Range

The historical range of the black-tailed prairie dog included portions of 11 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming), Canada, and Mexico (Hall and Kelson 1959, p. 365). This corresponds approximately with the Great Plains Physiographic Province, a zone of about 400 miles wide extending eastward from the Rocky Mountains. Approximately 395 million ac (160 million ha) of potential habitat are estimated to have existed across a range of approximately 440 million ac (178 million ha) (Black-footed Ferret Recovery Foundation (BFFRF) 1999, p. 4; Ernst 2008, p. 2). The species currently exists in the same 11 States, Canada, and Mexico, from extreme south-central Canada to northeastern Mexico and from approximately the 98th meridian west to the Rocky Mountains. This very roughly corresponds to the western halves of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas and the eastern halves of Montana, Wyoming, Colorado, and New Mexico. The species was largely extirpated from Arizona before 1940 (Arizona Game and Fish Department 1988, p. 22), and later described as extinct in that State (Cockrum 1960, p. 76). However, in 2008, the species was reintroduced into a small portion of its historical range in Arizona via translocations from wild populations in New Mexico (Van Pelt 2009, p. 41). Range contractions have occurred in the southwestern portion of the species' range in Arizona, New Mexico, and Texas through conversion of grasslands to desert shrub (Weltzin *et al.* 1997, pp. 758-760; Pidgeon *et al.* 2001, p. 1773). In the eastern portion of the species' range in Kansas, Nebraska, Oklahoma, South Dakota, and Texas, range contractions are largely due to habitat destruction as a result of cropland development (BFFRF 1999, p. 1).

Population Estimates

Most estimates of black-tailed prairie dog populations are based on estimates of the amount of occupied habitat (Facka *et al.* 2008, p. 360), not numbers of individual animals. Biggins *et al.* (2006 p. 94) evaluated several methodologies for estimating prairie dog populations and concluded that counting actual numbers of prairie dogs is feasible only for small areas. Determining the actual population of a colony requires marking all colony residents. This method is reasonable for only a small number (less than five) of small colonies (each with less than 200 residents) because of the difficulty and impracticality of catching and marking all residents (Biggins *et al.* 2006, p. 102). Estimates of occupied habitat remain the best measure of estimating prairie dog abundance over a larger area. The actual number of prairie dogs present depends upon the density of animals in that locality. Density of prairie dogs varies depending on the season, ecological region, and climatic conditions, but typically ranges from 2 to 18 individuals per ac (5 to 45 per ha) in early spring, before the emergence of young-of-the year (King 1955, p. 46; Koford 1958, pp. 10-11; Hoogland 1995, p. 98; Fagerstone and Ramey 1996, p. 85). Prairie dog occupied habitat may expand locally during drought, with a concurrent decline in density, due to the extended foraging area needed to obtain food. Density can also vary spatially and temporally due to poisoning, plague, and recreational shooting as discussed in later sections.

A more accurate large-scale estimate of occupied habitat can be derived by applying a correction factor for percent occupancy (the percent of habitat with burrows currently occupied by black-tailed prairie dogs) to an initial estimate. We can estimate percent occupancy via an on-site inspection of a portion of a survey area to confirm the presence of prairie dogs. This is particularly important in colonies that have been impacted by plague or poisoning. In these instances burrows remain but prairie dogs are absent. This unoccupied habitat should not be included in estimations of occupied habitat. We believe that occupied habitat is a reasonable measure to use in evaluating the persistence of the species inasmuch as comparisons involve millions of acres (hectares) and several-fold more millions of individual prairie dogs, whose numbers may fluctuate between and within years.

We have relied on the best available estimates of occupied habitat from States, land managers, researchers, or other sources to evaluate distribution, abundance, and trends of prairie dog populations. Recent trends of prairie dog populations are an appropriate surrogate for evaluating the status of the species.

Numerous estimates of black-tailed prairie dog occupied habitat are available, spanning a time period from 1903 to the present. In Table 1, we summarize historical estimates, estimates from a 1961 range wide survey, and the most recent available estimates. The 1961 estimates came from a Bureau of Sport Fisheries and Wildlife (BSFW) range wide survey that followed large-scale poisoning efforts and represent a low point in occupied habitat. Other estimates are from a variety of agencies and individuals as cited in Table 1. Additional estimates derived between 1961 and the most recent available estimates are also available in the Service's 2000 12–month finding and in the 2004 species assessment that removed the black-tailed prairie dog from the candidate list (Service 2000, p. 98; Service 2004, p. 7).

Some of these intermediate estimates are derived from field efforts, others are based on censuses by phone or mail, and the remainder are a result of desktop extrapolations. Desktop extrapolations used known estimates of occupied habitat that existed for portions of a state to derive a Statewide estimate for occupied habitat. These studies provide intermediate estimates of occupied habitat and additional information regarding trends.

TABLE 1. OCCUPIED HABITAT ESTIMATES FOR THE BLACK-TAILED PRAIRIE DOG

State or Country	Historical c (ha)[A]	1961 (BSFW) ac (ha)[A]	Most Recent ac (ha)	Year of Most Recent Survey
Arizona	650,000 (263,000) [1] 1,396,000 (565,000) [2]	0	8 (3)[3]	2008
Colorado	3,000,000 (1,214,000) [4] 5,445,000 (2,204,000) [2] 7,000,000 (2,833,000) [5]	96,000 (39,000)	788,657 (319,158) [6]	2006

TABLE 1. OCCUPIED HABITAT ESTIMATES FOR THE BLACK-TAILED PRAIRIE DOG—Continued

State or Country	Historical c (ha)[A]	1961 (BSFW) ac (ha)[A]	Most Recent ac (ha)	Year of Most Recent Survey
Kansas	2,000,000 (809,000) [7] 2,500,000 (1,012,000) [5] 7,503,000 (3,036,000) [2]	50,000 (20,000)	173,593 (70,251)[3]	2006
Montana	1,471,000 (595,000) [8] 6,000,000 (2,428,000) [5] 10,667,000 (4,317,000) [2]	28,000 (11,000)	193,862 (78,453)[9]	2008
Nebraska	6,000,000 (2,428,000) [5] 9,021,000 (3,651,000) [2]	30,000 (12,000)	136,991 (55,438)[10]	2003
New Mexico	6,640,000 (2,687,000) [11] 8,950,000 (3,622,000) [2]	17,000 (7,000)	40,000 (16,187)[12]	2003
North Dakota	2,000,000 (809,000) [5] 2,201,000 (891,000) [2]	20,000 (8,000)	22,597 (9,145)[13]	2006
Oklahoma	950,000 (384,000) [5] 4,625,000 (1,872,000) [2]	15,000 (6,000)	57,677 (23,341)[3]	2002
South Dakota	1,757,000 (711,000) [14] 6,411,000 (2,594,000) [2]	33,000 (13,000)	630,849 (255,296)[15]	2006
Texas	16,703,000 (6,759,000) [2] 57,600,000 (23,310,000) [16]	26,000 (11,000)	115,000 (46,539)[3]	2006
Wyoming	5,786,000 (2,342,000) [2] 16,000,000 (6,475,000) [5]	49,000 (20,000)	229,607 (92,919)[17]	2006
U.S. Total	**78,708,000 (31,852,000) [2] 102,583,000 (41,514,000) (non-BFFRF citations) [B]**	**364,000 (147,000)**	**2,388,841 (966,730)**	
Canada	2,000 (1,000) [5]		4,485 (1,815)[3]	2007
Mexico	1,384,000 (560,000) [18]		36,561 (14,796)[3]	2006
Range wide Total	**80,094,000-103,969,000 (32,413,000-42,075,000)**		**2,429,887 (983,340) [1]**	

[A] Estimates rounded to the nearest thousand.
[B] Low U.S. total estimate derived from the total of all BFFRF[2] estimates (a single methodology described below) for each State. High total estimates were derived by adding all other estimates; in States with more than one other historical estimate (CO, KS, MT) the average was used.
[1] Van Pelt 1998
[2] BFFRF 1999
[3] Koch 2009
[4] Clark 1989
[5] Knowles 1998
[6] Odell et al. 2008
[7] Lantz 1903
[8] Flath and Ibach 2009
[9] Hanauska-Brown 2009
[10] Amack and Ibach 2009
[11] Bailey 1932
[12] Johnson *et al.* 2004
[13] Knowles 2007
[14] Linder *et al.* 1972
[15] Vonk 2009
[16] Bailey 1905
[17] Grenier *et al.* 2007a
[18] Ceballos *et al.* 1993

Historical estimates of black-tailed prairie dog occupied habitat for a particular State are often quite variable. This is likely due to the imprecise survey methodologies used to derive early estimates. Additionally, some historical estimates were made after land conversion and poisoning had been initiated. If the average historical estimates (not including estimates from BFFRF 1999) in Table 1 for each State, Canada, and Mexico are summed, the range wide historical estimate of occupied habitat is approximately 104 million ac (42 million ha).

The Black-footed Ferret Recovery Foundation (BFFRF) (1999, p. 4) addressed this variability in historical estimates by evaluating U.S. Geological Survey land use and land cover data throughout the range of the black-tailed prairie dog. The BFFRF assumed that suitable land cover types such as grassland and agricultural land were potential habitat for the species historically. Other land cover types such as forests, rocky areas, wetlands, and lands with excessive slopes were not considered. Whicker and Detling (1988, p. 778) estimated that black-tailed

prairie dogs occupied at least 20 percent of short- and mixed-grass prairies historically. BFFRF applied this 20 percent historical occupancy rate to its estimate of potential habitat to derive an estimate of approximately 79 million ac (32 million ha) of historically occupied habitat in the United States.

A reasonable range wide estimate of historically occupied habitat for the black-tailed prairie dog that considers all historical estimates from Table 1 is approximately 80 to104 million ac (32 to 42 million ha).

In 1961, the BSFW, a predecessor agency of the Service, tabulated habitat estimates on a county-by-county basis throughout the range of all prairie dog species in the United States (BSFW 1961, p. 1). These estimates were completed by District Agents for BSFW who were familiar with remaining extant prairie dog populations. The survey was completed in response to concerns from within the agency regarding possible adverse impacts to prairie dogs following large-scale poisoning (Oakes 2000, p. 167). These data provide an estimate for a single point in time when prairie dogs were reduced to very low numbers following a half century of intensive, coordinated government poisoning efforts.

The petitioners questioned the use of the BSFW (1961) survey due to its brevity and the fact that it represented an extreme low point in black-tailed prairie dog occupied habitat. However, this survey has been cited in other seminal documents, including Leopold (1964, p. 38) and Cain *et al.* (1972, Appendix VIII). These latter two documents resulted in substantial changes in predator and rodent control policies in the United States, including a ban of Compound 1080, a highly toxic poison once widely used to control prairie dogs and other mammalian species. We agree that the early 1960s likely represented an extreme low in occupied habitat, but believe that the BSFW (1961) estimates of occupied habitat for the species are useful for trend analyses and represent the best available information for that time period.

The most recent Statewide estimates vary in survey date from 2002 to 2008 and include all black-tailed prairie dog occupied habitat known in a given State. The most current range wide estimate is approximately 2.4 million ac (1 million ha) including Canada and Mexico. Trends for occupied habitat in the United States appear to be increasing from the low point of 364,000 ac (147,000 ha) in 1961. Statewide trends for the same period (1961 – present) range from nearly stable in North Dakota to an approximately 19-fold increase in South Dakota. The status in Arizona is currently indeterminate due to the recent reintroduction.

We recognize that different methodologies were used at different times and in different locales for the various occupied habitat estimates. However, we believe that these estimates are the best available information and are comparable for the purpose of determining general population trends. Methods for determining occupied habitat have improved in recent years with the advent of tools such as aerial survey, satellite imagery, and Geographic Information Systems (GIS). Consequently, estimates that use these tools can be expected to be more accurate. Ground-truthing a percentage of the land surveyed to determine the percent of habitat occupied adds additional confidence to any large-scale estimate. States continue to refine their methodologies. A workshop is being planned in 2010 by the Western Association of Fish and Wildlife Agencies to further evaluate current survey methodologies for accuracy, statistical validity, cost, and other considerations. More detailed information regarding survey methodology, distribution, abundance, and trends for each State is provided as follows.

Arizona

Survey methodology – The most recent survey by the Arizona Game and Fish Department in 2008 consisted of ground mapping, including ground-truthing (Van Pelt 2009, p. 41). The small amount of occupied habitat enabled a detailed survey effort with ground-truthing throughout and a high degree of confidence in the estimate.

Distribution – Historically, black-tailed prairie dog occupied habitat existed in extreme southeastern Arizona (Hall and Kelson 1959, p. 365). The species was extirpated from the State by approximately 1940 (Arizona Game and Fish Dept. 1988, p. 22). In October 2008, the species was reintroduced on Las Cienegas National Conservation Area (Voyles 2009, pp. 1-2).

Abundance – Historically approximately 650,000 ac (263,000 ha) (Van Pelt 1998, p. 1) to 1,396,000 ac (565,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in Arizona. The most recent survey was conducted in 2008 (Van Pelt 2009, p. 41) and percent occupancy was 100 percent. The most recent estimate is 8 ac (3 ha) of occupied habitat, following an October 2008 reintroduction on Las Cienegas National Conservation Area (Koch 2009, p. 7). The next survey is scheduled for 2009 (Van Pelt 2009, p. 41).

Trends – Arizona contains approximately 1 percent of the potential habitat (Ernst 2008, p. 2) and less than 1 percent of currently occupied habitat in the United States. In 1961, no black-tailed prairie dog occupied habitat was found in Arizona (BSFW 1961, p. 1). Currently 8 ac (3 ha) are estimated to occur (Koch 2009, p. 7). The recent date of reintroduction does not allow for any interpretation of trends. However, reintroduction of the species after approximately 70 years of absence in the State is notable.

Colorado

Survey methodology – The most recent survey by the Colorado Division of Wildlife (CDOW) in 2006 consisted of aerial line-intercept surveys. The observers in airplanes fly line-intercepts and record the flight path and length of lines flown above black-tailed prairie dog colonies, then estimate the cumulative area of colonies from the percentage of the flight path intercepted by prairie dog colonies. CDOW attempted to ground-truth 10 percent of recorded colony intercepts (dependent upon landowner permission) (Odell *et al.* 2008, p. 1312). Improvements were made in previous survey methods, and results were published in the Journal of Wildlife Management (Odell *et al.* 2008, p. 1312). However, petitioners and other parties expressed concerns that this study overestimated the amount of occupied habitat in Colorado (Knowles 2009, pp. 1-2; McCain 2009, p. 2; Miller 2009, pp. 1-3; Proctor 2009, p. 2; Reading 2009, pp. 1-9; Sidle 2009a, p. 1). Specific concerns included the method of designating active and inactive colonies, the absence of density evaluation in determination of occupancy, differences in occupancy levels compared to surrounding states, and the likelihood of this methodology being adopted by other states without further refinement.

Estimates derived from large-scale surveys, such as those conducted at a Statewide level, are not as accurate as smaller-scale, more intensive surveys that can include ground-truthing of 100 percent of the habitat. This level of effort is not feasible in large surveys. Nearly all States, including Colorado, dedicate considerable resources to conducting surveys and refining their methodologies, which contribute to improved estimates in future surveys. The CDOW added ground-truthing to their most recent survey, which further refined their estimate of black-tailed

prairie dog occupied habitat. We consider the estimate provided by Odell *et al.* (2008, p. 1311) to constitute the best available information for Colorado.

Distribution – Historically, black-tailed prairie dog occupied habitat existed in the eastern half of Colorado, east of the Front Range mountains (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant populations throughout at least 75 percent of the historical range (Van Pelt 2009, p. 14).

Abundance – Historically, approximately 3,000,000 ac (1,214,000 ha) (Clark 1989, p. 17) to 7,000,000 ac (2,833,000 ha) (Knowles 1998, p. 12) of black-tailed prairie dog occupied habitat existed in Colorado. CDOW completed the most recent survey in 2006 (Van Pelt 2009, p.14). Percent occupancy was 88 percent (Odell *et al.* 2008, p. 1311). Adjusted to account for 88 percent occupancy, the most recent estimate of occupied habitat is 788,657 ac (319,158 ha) (Odell *et al.* 2008, p. 1311). The next survey is scheduled for 2011 (Van Pelt 2009, p. 14).

Trends – Colorado contains approximately 8 percent of the potential habitat (Ernst 2008, p. 2) and approximately 33 percent of currently occupied habitat in the United States. In 1961, Colorado contained an estimated 96,000 ac (39,000 ha) of black-tailed prairie dog occupied habitat (BSFW 1961, p. 1). Currently, 788,657 ac (319,158 ha) of occupied habitat are estimated to occur in the state (Odell *et al.* 2008, p. 1311). This amount represents an apparent eight-fold increase in occupied habitat since 1961.

Kansas

Survey methodology – The Kansas Department of Wildlife and Parks conducted the most recent survey in 2006. It consisted of a combination of line transect (a survey along a straight path of standard width where the presence of appropriate habitat is recorded when observed) and interpretation of National Agriculture Imagery Program photographs (Van Pelt 2009, p. 15). No record of ground-truthing information was available. Because the State did not determine percent of habitat occupied, the estimate is less accurate than if they had ground-truthed a percentage of the lands surveyed and addressed percent occupancy. Nevertheless, the estimate is the most recent and best available information regarding the amount of black-tailed prairie dog habitat within the State.

Estimates of percent occupancy provided in 10 recent Statewide surveys range from 73-89 percent, with an average of 81 percent (EDAW 2000, p. 20; Sidle *et al.* 2001, p. 930; Bischof *et al.* 2004. p. 2; Johnson *et al.* 2004, p. 11; Knowles 2007, p. 2; Odell *et al.* 2008, p. 1311; Emmerich 2009, p. 2; Hanauska-Brown 2009, p. 1). If the current Kansas estimate of 173,593 ac (70,251 ha) of occupied habitat were assumed to have 81 percent occupancy, this would equate to 140,610 ac (56,903 ha).

Distribution – Historically, black-tailed prairie dog occupied habitat existed in the western two-thirds of Kansas (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant populations throughout at least 75 percent of the historical range (Van Pelt 2009, p. 16).

Abundance – Historically, approximately 2,000,000 ac (809,000 ha) (Lantz 1903, p. 150) to 7,503,000 ac (3,036,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in Kansas. The Kansas Department of Wildlife and Parks completed the most recent survey in 2006 (Van Pelt 2009); it did not note percent occupancy. The most recent estimate is 173,593 ac (70,251 ha) (Van Pelt 2009, p. 15). The next survey is scheduled for 2009 (Van Pelt 2009, p. 15).

Trends – Kansas contains approximately 10 percent of the potential habitat (Ernst 2008, p. 2) and approximately 7 percent of currently occupied habitat in the United States. In 1961, 50,000 ac (20,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in Kansas (BSFW 1961, p. 1). Currently 173,593 ac (70,251 ha) of occupied habitat are estimated to occur (Koch 2009, p. 7). This area represents an apparent three-fold increase since 1961.

Montana

Survey methodology – The most recent survey conducted by the Montana Department of Fish, Wildlife and Parks in 2008 consisted of an aerial line intercept survey, patterned after Sidle *et al.* (2001, pp. 929-931), White *et al.* (2005, pp. 266-268), and Odell *et al.* (2008, pp. 1312-1313). No information was provided by the Montana Department of Fish, Wildlife and Parks regarding ground-truthing efforts in their preliminary report, although estimates for active and inactive colonies were provided, and percent occupancy was addressed (Hanauska-Brown 2009, p. 1).

Distribution – Historically, black-tailed prairie dog occupied habitat existed in the eastern two-thirds of Montana, with the exception of the northeastern corner of the State (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant populations throughout over 90 percent of the historical range (Van Pelt 2009, p. 20).

Abundance – Historically, approximately 1,471,000 ac (595,000 ha) (Flath and Clark 1986, p. 67) to 10,667,000 ac (4,317,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in Montana. The most recent survey was completed by the Montana Department of Fish, Wildlife and Parks in 2008 (Van Pelt 2009, p. 19). The percent of habitat occupied was 85 percent (Hanauska-Brown 2009, p. 1). Adjusted to account for 85 percent occupancy, the most recent estimate of occupied habitat is 193,862 ac (78,453 ha) (Hanauska-Brown 2009, p. 1). The next survey is scheduled for 2011.

Trends – Montana contains approximately 12 percent of the potential habitat (Ernst 2008, p. 2) and approximately 8 percent of currently occupied habitat in the United States. In 1961, an estimated 28,000 ac (11,000 ha) of black-tailed prairie dog occupied habitat occurred in Montana (BSFW 1961, p. 1). Currently, 193,862 ac (78,453 ha) of occupied habitat are estimated to occur (Hanauska-Brown 2009, p. 1). This area represents nearly a seven-fold increase since 1961.

Nebraska

Survey methodology – The Nebraska Game and Parks Commission conducted the most recent survey in 2003, consisting of an aerial line intercept survey by county using variably spaced transects based on the estimated number of occupied acres in each county, with more transects in the more densely populated counties (Bischof *et al.* 2004, pp. 3-6). Methodology was patterned after Sidle *et al.* (2001, pp. 929-931). Based on the information provided regarding methodology, ground-truthing was not conducted; however, habitat was only classified as active (occupied) if black-tailed prairie dogs were seen (Bischof *et al.* 2004, pp. 3-6). Additional habitat was classified as ''possibly active'' if no prairie dogs were visible but evidence of recent activity was present.

Distribution – Historically, black-tailed prairie dog occupied habitat existed throughout most of Nebraska west of the 97th meridian, with the exception of most of the Sandhills region in the north-central portion of the State (Hall and Kelson 1959, p. 365). The current distribution is unknown, but the species occurs in less than 75 percent of counties with historical records (Luce 2003, p. 17).

Abundance – Historically, approximately 6,000,000 ac (2,428,000 ha) (Knowles 1998, p. 12) to 9,021,000 ac (3,651,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in Nebraska. The most recent survey was completed by the Nebraska Game and Parks Commission in 2003 (Amack and Ibach 2009, p. 1). The percent of habitat occupied was 74 percent (Bischoff *et al.* 2004, p. 6). Adjusted to account for 74 percent occupancy, the most recent estimate of occupied habitat is 136,991 ac (55,438 ha) (Amack and Ibach 2009, p. 1). An additional 102,828 ac (41,613 ha) were not verified and were classified as possibly active. No future surveys are scheduled at this time (Amack and Ibach 2009, p. 2).

Trends – Nebraska contains approximately 11 percent of the potential habitat (Ernst 2008, p. 2) and approximately 6 percent of currently occupied habitat in the United States. In 1961, 30,000 ac (12,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in Nebraska (BSFW 1961, p. 1). Currently, 136,991 ac (55,438 ha) of occupied habitat are estimated to occur (Amack and Ibach 2009, p. 1). This area represents nearly a five-fold increase since 1961.

New Mexico

Survey methodology – New Mexico Department of Game and Fish conducted the most recent survey in 2003, which consisted of examination of digital orthophoto quadrangle imagery, followed by an effort to ground-truth 15 percent of recorded colonies (dependent upon landowner permission) (Johnson *et al.* 2004, pp. 3-4). Due to lack of permission in some cases, the actual amount of habitat ground-truthed was slightly less than 15 percent.

Distribution – Historically, black-tailed prairie dog occupied habitat existed in the eastern and southwestern two-thirds of the State (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant populations in 54 percent of the counties that had historical records (Van Pelt 2009, p. 28).

Abundance – Historically, approximately 6,640,000 ac (2,687,000 ha) (Bailey 1932, pp. 14 and 16) to 8,950,000 ac (3,622,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in New Mexico. The most recent survey was completed by the New Mexico Department of Game and Fish in 2003 (Johnson *et al.* 2004, p. 11). The percent of habitat occupied was 81 percent (Johnson *et al.* 2004, p. 11). Adjusted to account for 81 percent occupancy, the most recent estimate of occupied habitat is 40,000 ac (16,187 ha) (Johnson *et al.* 2004, p. 11). The next survey is underway and scheduled to be completed in 2009 (Van Pelt 2009, p. 27).

Trends – New Mexico contains approximately 12 percent of the potential habitat (Ernst 2008, p. 2) and approximately 2 percent of currently occupied habitat in the United States. In 1961, 17,000 ac (7,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in New Mexico (BSFW 1961, p. 1). Currently, 40,000 ac (16,187 ha) of occupied habitat are estimated to occur (Johnson *et al.* 2004, p. 11). This area represents an apparent two-fold increase since 1961.

North Dakota

Survey methodology – The most recent survey conducted by the North Dakota Game and Fish Department in 2006 consisted of aerial surveys, followed by an effort to ground-truth all active colonies that they were able to get landowner permission to visit and then map colonies using GPS (Knowles 2007, p. 3).

Distribution – Historically, black-tailed prairie dog occupied habitat existed in the southwestern third of North Dakota, west of the Missouri River (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant populations in 79 percent of counties that historically contained prairie dogs (Van Pelt 2009, p. 24).

Abundance – Historically, approximately 2,000,000 ac (809,000 ha) (Knowles 1998, p. 12) to 2,201,000 ac (891,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in North Dakota. The most recent survey was completed by the North Dakota Game and Fish Department in 2006 (Knowles 2007, p. 1). 89 percent of acres were occupied (Knowles 2007, p. 2). Adjusted to account for 89 percent occupancy, the most recent estimate of occupied habitat is 22,597 ac (9,145 ha) (Knowles 2007, p. 1). The next survey is scheduled for 2010 (Van Pelt 2009, p. 24).

Trends – North Dakota contains approximately 3 percent of the potential habitat (Ernst 2008, p. 2) and approximately 1 percent of currently occupied habitat in the United States. In 1961, 20,000 ac (8,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in North Dakota (BSFW 1961, p. 1). Currently, 22,597 ac (9,145 ha) of occupied habitat are estimated to occur (Knowles 2007, p. 7). Occupied habitat has apparently remained relatively stable since 1961.

Oklahoma

Survey methodology – The Oklahoma Department of Wildlife Conservation conducted the most recent survey in 2002, which consisted of interpretation of aerial maps and on-site ground-truthing with input from county game wardens (Van Pelt 2009, p. 30).

Distribution – Historically, black-tailed prairie dog occupied habitat existed throughout approximately the western two-thirds of Oklahoma west of the 97th meridian (Hall and Kelson 1959, p. 365). Currently, distribution is largely limited to the panhandle, although scattered remnant populations occur elsewhere throughout 87 percent of the historical range (Van Pelt 2009, p. 30).

Abundance – Historically, approximately 950,000 ac (384,000 ha) (Knowles 1998, p. 12) to 4,625,000 ac (1,872,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in Oklahoma. Ground-truthing was conducted in the most recent survey completed by the Oklahoma Department of Wildlife Conservation in 2002 (Van Pelt 2009, p. 30), however the percent of habitat occupied was not noted (Van Pelt 2009). The most recent estimate of occupied habitat is 57,677 ac (23,341 ha) (Koch 2009, p. 7) based upon the 2002 survey (Van Pelt 2009, p. 30). The next survey is scheduled for 2008 through 2009 (Van Pelt 2009, p. 30). We have not yet received any survey results.

Trends – Oklahoma contains approximately 6 percent of the potential habitat (Ernst 2008, p. 2) and approximately 2 percent of currently occupied habitat in the United States. In 1961, 15,000 ac (6,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in Oklahoma (BSFW 1961, p. 1). Currently, 57,677 ac (23,341 ha) of occupied habitat are estimated to occur (Koch 2009, p. 7). This area represents a nearly four-fold increase since 1961.

South Dakota

Survey methodology – The South Dakota Department of Game, Fish, and Parks conducted the most recent survey conducted in 2009 which consisted of interpretation of aerial photographs (Kempema *et al.* 2009, p. 2; Vonk 2009, p. 1). Ground-truthing was conducted on 25 percent of the surveyed area (Kempema *et al.* 2009, pp. 3, 5).

Distribution – Historically, black-tailed prairie dog occupied habitat existed throughout the western three-fourths of the State (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant

populations throughout 78 percent of the counties within the historical range (Van Pelt 2009, p. 34).

Abundance – Historically, approximately 1,757,000 ac (711,000 ha) (Linder *et al.* 1972, p. 29) to 6,411,000 ac (2,594,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in South Dakota. The most recent survey was completed by the South Dakota Department of Game, Fish, and Parks in 2009. Percent occupancy was 93 percent (Kempema *et al.* p. 5). Adjusted to account for 93 percent occupancy, the most recent estimate of occupied habitat is 630,849 ac (255,296 ha). The next survey is scheduled for 2011 (Van Pelt 2009, p. 32).

Trends – South Dakota contains approximately 9 percent of the potential habitat (Ernst 2008, p. 2) and approximately 26 percent of currently occupied habitat in the United States. In 1961, 33,000 ac (13,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in South Dakota (BSFW 1961, p. 1). Currently, 630,849 ac (255,296 ha) of occupied habitat are estimated to occur (Kempema *et al.* 2009, p. 4; Vonk 2009, p. 1). This represents an apparent 19-fold increase since 1961.

Texas

Survey methodology – The Texas Parks and Wildlife Department in 2006 conducted the most recent survey which consisted of interpretation of Digital Orthoimagery Quarter Quadrangles (DOQQs) and ground-truthing (Van Pelt 2009, p. 37). The proportion of habitat that was ground-truthed was not noted.

Distribution – Historically, black-tailed prairie dog occupied habitat existed throughout approximately the northwestern one-third of Texas (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant populations throughout 75 percent of the historical range (Van Pelt 2009, p. 38).

Abundance – Historically, approximately 57,600,000 ac (23,310,000 ha) (Bailey 1905, p. 90) to 16,703,000 ac (6,759,000 ha) (BFFRF 1999, p. 4) of black-tailed prairie dog occupied habitat existed in Texas. The Texas Parks and Wildlife Department completed the most recent survey in 2006 (Van Pelt 2009, p. 37). Percent occupancy was not noted. The most recent estimate of occupied habitat is 115,000 ac (46,539 ha) based upon the 2006 survey (Koch 2009, p. 7). The next survey is scheduled for 2010 (Van Pelt 2009, p. 37).

Trends – Texas contains approximately 21 percent of the potential habitat (Ernst 2008, p. 2) and approximately 5 percent of currently occupied habitat in the United States. In 1961, 26,000 ac (11,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in Texas (BSFW 1961, p. 1). Currently, 115,000 ac (46,539 ha) of occupied habitat are estimated to occur (Koch 2009, p. 7). This area represents an apparent four-fold increase since 1961.

Wyoming

Survey methodology – The Wyoming Game and Fish Department conducted the most recent survey in 2006 which consisted of delineation of colony boundaries from interpretation of DOQQs, followed by aerial survey to confirm status (Grenier *et al.* 2007b, pp. 115-116).

Distribution – Historically, black-tailed prairie dog occupied habitat existed in the eastern half of Wyoming, east of the Rocky Mountains (Hall and Kelson 1959, p. 365). Currently, distribution appears to be scattered in remnant populations throughout at least 75 percent of the historical range (Van Pelt 2009, p. 40).

Abundance – Historically, approximately 5,786,000 ac (2,342,000 ha) (BFFRF 1999, p. 4) to 16,000,000 ac (6,475,000 ha) (Knowles 1998, p. 12) of black-tailed prairie dog occupied habitat existed in Wyoming. The most recent survey was completed by the Wyoming Game and Fish Department in 2006 (Emmerich 2009, p. 2). Occupied habitat was categorized as healthy (87 percent) or impacted (13 percent) (Grenier *et al.* 2007a, p. 125. Adjusted to account for 87 percent occupancy, the most recent estimate of occupied habitat is 229,607 ac (92,919 ha) (Grenier *et al.* 2007a, p. 125). The next survey is scheduled for 2009 (Van Pelt 2009, p. 39).

Trends – Wyoming contains approximately 6 percent of the potential habitat (Ernst 2008, p. 2) and nearly 10 percent of currently occupied habitat in the United States. In 1961, 49,000 ac (20,000 ha) of black-tailed prairie dog occupied habitat were estimated to occur in Wyoming (BSFW 1961, p. 1). Currently, 229,607 ac (92,919 ha) of occupied habitat are estimated to occur (Grenier *et al.* 2007a, p. 125). This area represents an apparent nearly five-fold increase since 1961.

Canada

Survey methodology – The most recent survey was described as mapping with GPS (Koch 2009, p. 7). We do not have more detailed information concerning the methods used, including whether data was ground-truthed or corrected for occupancy.

Distribution – Historically, black-tailed prairie dog occupied habitat existed in southernmost Saskatchewan (Hall and Kelson 1959, p. 365). Currently, distribution is limited to remnant populations within the same range, primarily in Grasslands National Park (Tuckwell and Everest 2009, p. 2).

Abundance – Historically, approximately 2,000 ac (809 ha) of black-tailed prairie dog occupied habitat existed in Canada (Knowles 1998, p. 12). Surveys are conducted every other year (Tuckwell and Everest 2009, p. 16). The most recent survey was completed in 2007 (Van Pelt 2009, p. 64). Percent occupancy was not noted. The most recent estimate of occupied habitat is 4,485 ac (1,815 ha) based upon the 2007 survey (Koch 2009, p. 3).

Trends – Canada represents the periphery of the black-tailed prairie dog's range and habitat has always been limited, but the amount of occupied habitat appears stable (Tuckwell and Everest 2009, p. 2).

Mexico

Survey methodology – Recent survey techniques and extent of ground-truthing efforts was not reported.

Distribution – Historically, black-tailed prairie dog occupied habitat existed throughout the northern portion of the Mexican States of Chihuahua and Sonora (Hall and Kelson 1959, p. 365). Currently, distribution appears limited to remnant populations in a small area of northern Chihuahua (List 1997, p. 141).

Abundance – Historically, approximately 1,384,000 ac (560,000 ha) of black-tailed prairie dog occupied habitat existed in Mexico (Ceballos *et al.* 1993, p. 109). The most recent survey was completed in 2006 (Koch 2009, p. 3). Percent occupancy was not noted. The most recent estimate is 36,561 ac (14,796 ha) of occupied habitat (Koch 2009, p. 3). The year of the next survey is not known.

Trends – Mexico experienced a prolonged drought in recent years, which resulted in dramatic loss of vegetation, followed by a reduction in black-tailed prairie dog occupied habitat (Larson 2008, p. 87). The most recent estimate is 36,561 ac (14,796 ha) of occupied habitat in 2006 (Koch 2009, p. 3). Occupied habitat appears to be declining in recent years.

Summary of Factors Affecting the Species

We have considered all scientific and commercial information available in our files, including pertinent information received during this status review. We relied primarily on published, peer-

reviewed literature; information provided by affected state wildlife agencies; and information provided by the Western Association of Fish and Wildlife Agencies. We received more than 18,000 comment letters from individuals, agencies, organizations, and companies. Most were form letters that expressed support or opposition to listing the black-tailed prairie dog. However, we cite several submissions that provided useful information in this finding. Much of the data refers to the 98 percent of occupied habitat that occurs in the United States, but we include data on Canada and Mexico where available.

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (A) present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or education purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We addressed the potential threats discussed in the petition under the most appropriate factor; however, we recognize that several potential threats might be considered under more than one factor. For example, poisoning can affect habitat (Factor A), and can be affected by state and Federal regulatory mechanisms (Factor D), but is primarily addressed in this finding under other factors (Factor E). In making this finding, information pertaining to the black-tailed prairie dog , in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Some black-tailed prairie dog habitat has been destroyed, modified, or curtailed by:

(1) conversion of native prairie habitat to cropland;

(2) urbanization;

(3) oil, gas, and mineral extraction;

(4) habitat loss caused by loss of prairie dogs; and

(5) livestock grazing, fire suppression, and weeds.

In some instances, black-tailed prairie dog habitat continues to be impacted by these same stressors. The Black-tailed Prairie Dog Conservation Team developed conservation plans that address issues of habitat loss. Each is discussed below.

Conversion of native prairie habitat to cropland

The present or threatened destruction of habitat due to cropland development affects portions of the black-tailed prairie dog's range. Regular cultivation precludes burrow development by the species. This practice is the most substantial cause of habitat destruction that we are able to quantify. Conversion of native prairie to cropland has largely progressed across the species' range from east to west. The most intensive agricultural use is in the eastern portion of the black-tailed prairie dog's range, in portions of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, where higher rainfall amounts and generally better soils result in greater agricultural production. Land with the highest potential for traditional farming uses was converted many years ago. Consequently, the present and future destruction of habitat through cropland conversion is likely much less than in the early days of agricultural development in the Great Plains.

A detailed assessment using the National Land Cover Dataset determined that there are approximately 110 million ac (45 million ha) of cropland and 283 million ac (115 million ha) of rangeland within the species' range at present (Ernst 2008, pp. 10-19). When the 2.4 million ac (1 million ha) of currently occupied habitat is contrasted with the 283 million ac (115 million ha) of rangeland, it appears that sufficient potential habitat still occurs within the range of the species in the United States to accommodate large expansions of prairie dog populations. These areas could be colonized over time by expansion of existing colonies if the landowners and public sentiment allows.

In recent years, ethanol production from corn has expanded in the United States (Westcott 2007, p. 1). However, most corn is cultivated east of the range of the black-tailed prairie dog (Westcott 2007, p. 3). Additionally, the increase in corn production largely occurs by adjusting crop rotations between corn and soybeans (Westcott 2007, p. 7). We do not anticipate that increased ethanol production will result in a substantial loss in the species' occupied or potential habitat.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, suggests that the present or threatened destruction of habitat due to cropland development is not a limiting factor for the species.

Urbanization

The present or threatened destruction of habitat due to urbanization affects portions of the black-tailed prairie dog's range, particularly east of the Front Range in Colorado. However, in a Statewide or range wide context, loss of habitat due to urbanization is not substantial. In Colorado, approximately 502,000 ac (203,000 ha) of urban lands and 21.6 million ac (8.8 million ha) of rangeland occur within the species' range (Ernst 2008, pp. 10-11). This equates to approximately 2 percent of potential habitat lost to urbanization in Colorado. Throughout the United States, approximately 2.4 million ac (1 million ha) of urban lands occur within the species' historic range (Ernst 2008, pp. 10-18), while approximately 283 million ac (115 million ha) of rangeland exist within the species' range. This equates to less than 1 percent of potential habitat lost to urbanization in the United States. A very small percentage of potential prairie dog habitat has been lost to urbanization. As a consequence, it appears that sufficient potential habitat still occurs within the range of the species, including Colorado, to accommodate existing or large expansions of prairie dog populations, even if some local prairie dog populations may be lost to urbanization in the future.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that the present or threatened destruction of habitat due to urbanization is not a limiting factor for the species.

Oil, gas, and mineral extraction

The present or threatened curtailment of habitat due to oil, gas, and mineral extraction may affect portions of black-tailed prairie dog occupied habitat; however, we have no information that quantifies these impacts. Qualitative information was submitted on behalf of the Petroleum Association of Wyoming, the Public Lands Advocacy, the Montana Petroleum Association, the New Mexico Oil and Gas Association, Oklahoma Independent Petroleum Association, and the Independent Petroleum Association of Mountain States. Mapping in colonies within oil and gas development areas in Wyoming indicates increased prairie dog occupancy in these areas (Sorensen *et al.* 2009, pp. 5-6). Although we have not confirmed this conclusion, the current status of the black-tailed prairie dog, as

indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that the present or threatened curtailment of habitat due to energy development is not a limiting factor for the species in Wyoming or elsewhere throughout its range.

Habitat loss caused by loss of prairie dogs

The present or threatened modification of habitat due to the extirpation of black-tailed prairie dogs may affect portions of the species' range. The petitioners theorized that the loss of prairie dogs from their habitats may create a negative feedback loop, resulting in their habitat becoming less suitable. Documentation of the species' effects on habitat is mixed. In some instances, prairie dogs may have a positive effect on habitat (Koford 1958, pp. 43–62; Kotliar *et al.* 1999, p. 178; Johnson-Nistler *et al.* 2004, p. 641; Lantz *et al.* 2006, p. 2671). Positive effects have been particularly notable in the southwestern portion of the species' range where the foraging and clipping habits of prairie dogs destroy seedlings of undesirable shrub and tree species that might otherwise invade and eventually convert grasslands to scrublands. The aeration of soil from burrow construction may increase the growth of grasses (Koford 1958, pp. 43–62; Davis 1974, p. 156; Fagerstone and Ramey 1996, p. 89; List 1997, p. 150; Weltzin *et al.* 1997, pp. 758–760). Prairie dogs may also have a negative habitat effect by reducing grass species and causing conversion to less desirable forb species (Koford 1958, pp. 43–62; Bonham and Lerwick 1976, p. 225; Klatt and Hein 1978, p. 316; Fagerstone and Ramey 1996, p. 88; Johnson-Nistler *et al.* 2004, p. 641). However, the current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that the present or threatened modification of habitat due to the presence or absence of prairie dogs on their habitat is not a limiting factor for the species.

Livestock grazing, fire suppression, and weeds

The present or threatened modification of habitat due to livestock grazing, fire suppression, and weeds may affect portions of the black-tailed prairie dog's range. Nonnative plant species may increase as a result of overgrazing and in the absence of fire, may modify the habitat. However, the impact of plant composition on habitat suitability for prairie dogs is contradictory. Some studies suggest that prairie dogs cause deterioration in forage quality, while others contend that livestock grazing causes a deterioration in forage quality (Koford 1958, pp. 43–62; Uresk *et al.* 1981, p. 200; Cerovski 2004, p. 101; Vermeire *et al.* 2004, p. 691; Detling 2006, p. 115). Available information indicates that livestock grazing typically encourages black-tailed prairie dog expansion by maintaining vegetation at a lower height that improves visibility for prairie dogs (Osborn and Allan 1949, p. 330; Koford 1958, p. 68; Snell and Hlavachick 1980, p. 240; Uresk *et al.* 1981, p. 200; Hubbard and Schmitt 1983, p. 30; Marsh 1984, p. 203; Snell 1985, p. 30; Groombridge 1992, p. 290; U.S. Forest Service 1995, p. 5; Fagerstone and Ramey 1996, p. 88; Wuerthner 1997, pp. 460–461; U.S. Forest Service 1998, p. 4; Forest 2005, p. 528; Andelt 2006, p. 131).

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that the present or threatened modification of habitat due to livestock grazing, fire suppression, or weeds is not a limiting factor for the species.

The Black-tailed Prairie Dog Conservation Assessment and Strategy

Following the 1998 petitions to list the black-tailed prairie dog, a group of representatives from each State within the historical range of the species formed the Black-tailed Prairie Dog Conservation Team. The team intended to reduce threats to the species and increase the amount of habitat occupied by the species. The Team developed ''The Black-tailed Prairie Dog Conservation Assessment and Strategy'' (Van Pelt 1999), which initiated development of ''A Multi-State Conservation Plan for the Black-tailed Prairie Dog, *Cynomys ludovicianus*, in the United States'' (Multi-State Plan) (Luce 2002).

The purpose of the Multi-State Plan was to provide adaptive management goals for future prairie dog management within the 11 States. The Multi-State Plan identified the following minimum 10–year target objectives:

(1) maintain at least the currently occupied acreage of black-tailed prairie dog habitat in the United States;

(2) increase occupied habitat to at least 1,693,695 ac (685,414 ha) in the United States by 2011;

(3) maintain at least the current occupied acreage in the two complexes greater than 5,000 ac (2,023 ha) that then occurred on and adjacent to Conata Basin–Buffalo Gap National Grassland, South Dakota, and Thunder Basin National Grassland, Wyoming;

(4) develop and maintain a minimum of 9 additional complexes greater than 5,000 ac (2,023 ha), with each State managing or contributing to at least one complex greater than 5,000 ac (2,023 ha) by 2011;

(5) maintain at least 10 percent of total occupied acreage in colonies or complexes greater than 1,000 ac (405 ha) by 2011; and

(6) maintain distribution over at least 75 percent of the counties in the historical range, or at least 75 percent of the historical geographic distribution.

Objectives 1, 2, and 3 have been achieved. Objectives 4, 5, and 6 have not yet been demonstrated in all States. The progress of individual states in achieving these objectives is described in more detail under Factor D.

The States also agreed to draft Statewide management plans for the black-tailed prairie dog. The States approve their own Statewide management plans. Colorado and Wyoming have finalized grassland conservation plans that support and meet the objectives of the Multi-State Plan. South Dakota has a finalized management plan that supports and meets the Multi-State Plan's objectives, but reserves the right to preserve its own management authority and identify its own goals and objectives. Kansas, Oklahoma, and Texas have finalized management plans that support the Multi-State Plan objectives, but have not yet met all of those objectives. Montana, New Mexico, and North Dakota have finalized management plans that do not support or meet all of the objectives of the Multi-State Plan. Arizona has a draft plan that supports the Multi-State Plan's objectives, but their Wildlife Commission did not approve it. Nevertheless, Arizona continues to work toward the Multi-State Plan's objectives. Nebraska has a draft plan that supports the Multi-State Plan objectives, but it its Wildlife Commission did not approve it. In Nebraska, work toward the Multi-State Plan's objectives has been halted.

As a result of the development of the Multi-State and Statewide management plans, state wildlife agencies are surveying and monitoring black-tailed prairie dogs on a more regular basis. These efforts will enable the States to monitor the status of the black-tailed prairie dog and the progress of the conservation programs.

Summary of Factor A

Cropland conversion, urbanization, energy development, conversion to scrubland in the absence of prairie dogs, and invasion of non-native species all occur within the historical range of the black-tailed prairie dog, and will likely

continue to occur in the future. However, when the approximately 2.4 million ac (1 million ha) of currently occupied habitat is contrasted with the extant 283 million ac (115 million ha) of rangeland, it appears that sufficient potential habitat still occurs within the range of the species in the United States to accommodate prairie dog expansions over time despite some habitat loss from these stressors. Since the early 1960s, occupied habitat has increased in every State. The species' occupied habitat in the United States is estimated to have increased by over 600 percent from 1961 until the present time. This increase has occurred despite continued impacts to the species' habitat and impacts from other factors. The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that the present or threatened destruction, modification, or curtailment of habitat or range is not a limiting factor for the species. The most significant impact to the species' habitat that we are able to quantify is habitat loss due to cropland conversion, and the rate of conversion is likely much less than in the early days of agricultural development in the Great Plains. Consequently, we do not anticipate that impacts from habitat loss are likely to negatively impact the status of the species in the foreseeable future.

We conclude that the best scientific and commercial information available indicates that the black-tailed prairie dog is not now, or in the foreseeable future, threatened by the present or threatened destruction, modification, or curtailment of its habitat or range to the extent that listing under the Act as a threatened or endangered species is warranted at this time. Abundant suitable habitat in the form of rangeland exists and is not a limiting factor for the species. The present or threatened modification of prairie dog habitat presented by sylvatic plague is addressed under Factor C, and the present or threatened curtailment of prairie dog habitat presented by poisoning is addressed under Factor E.

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

Recreational shooting of black-tailed prairie dogs can reduce population densities, cause behavioral changes, diminish reproduction and body condition, increase emigration, and cause extirpation in isolated circumstances (Stockrahm 1979, pp. 80–84; Knowles 1988, p. 54; Vosburgh 1996, pp. 13, 15, 16, and 18; Vosburgh and Irby 1998, pp. 366–371; Pauli 2005, p. 1; Reeve and Vosburgh 2006, p. 144). This may be due to the colonial nature of prairie dogs, their sensitivity to social disruption, and the intense nature of some recreational shooting. However, available information from several of the same studies indicates that populations can also often recover from very low numbers following intensive shooting (Knowles 1988, p. 54; Vosburgh 1996, pp. 16, 31; Dullum *et al.* 2005, p. 843; Pauli 2005, p. 17; Cully and Johnson 2006, pp. 6–7). Based on the research cited above, it appears that a typical scenario is either: (1) once populations have been reduced, shooters go elsewhere and populations recover; or (2) continued shooting maintains reduced population size at specific sites. Some landowners maintain prairie dog populations and derive income from charging people for recreational shooting. Monetary gain from shooting fees may motivate landowners to preserve prairie dog colonies for future shooting opportunities. This is currently an alternative to eradicating them by poisoning (Vosburgh and Irby 1998, pp. 366–371; Reeve and Vosburgh 2006, pp. 154–155).

Pauli (2005) studied five colonies not exposed to shooting and compared population effects with five colonies where shooting occurred. He found that in the colonies with shooting, reproductive output decreased by 76 percent from 2003-2004 on the shot colonies (Pauli 2005, p. 29). However, all colonies but one expanded from 2003-2004, although expansion was greater in control colonies (49.6 percent) than in colonies where shooting occurred (25.0 percent) (Pauli 2005, p. 17). The colony that did not expand was a control colony that experienced plague (Pauli *et al.* 2006, p. 77). A second paper on the same research project noted a decline in reproductive output in colonies with shooting, of 82 percent from 2003-2004, but did not discuss colony expansion (Pauli and Buskirk 2007a, p. 1228).

Recreational shooting may increase the potential for lead poisoning in predators and scavengers consuming shot prairie dogs (Reeve and Vosburgh 2006, p. 154). This risk may extend to prairie dogs, which have occasionally been observed to cannibalize carcasses (Hoogland 1995, p. 14). Recreational shooters primarily use bullets designed to expand on impact and rarely remove carcasses. In one study, expanding bullets left an average of 3.426 grains (228.4 milligrams (mg)) of lead in a prairie dog carcass, while non-expanding bullets averaged 0.297 grains (19.8 mg) of lead (Pauli and Buskirk 2007b, p.103). The authors noted that the amount of lead in a single prairie dog carcass shot with an expanding bullet is potentially sufficient to acutely poison scavengers or predators, and may provide an important portal for lead entering wildlife food chains. A wide range of sublethal toxic effects are also possible from smaller quantities of lead (Pauli and Buskirk 2007, p.103).

Black-tailed prairie dogs are occasionally collected for the pet trade, plague research, and zoo displays. However, we have no information indicating any adverse effects resulting from possible overutilization for commercial (pet trade), scientific (plague research), or educational (zoo displays) purposes.

Summary of Factor B

Recreational shooting of prairie dogs can cause localized effects on a population. However, literature documenting effects from shooting of prairie dogs also frequently describes subsequent rebounds in local populations. Extirpations due to recreational shooting, while documented, are rare and therefore not considered a significant threat overall to the species. Recent Statewide estimates of occupied habitat further reinforce this observation by documenting population increases in States that allow shooting. There is no information available to indicate that the type of bullet used to shoot prairie dogs poses a substantial risk of lead poisoning to surviving prairie dogs due to scavenging carcasses. However, the risk to other species that may scavenge prairie dog carcasses should be a management consideration if intensive recreational shooting occurs. Since the early 1960s, occupied habitat has increased in every State. Throughout the United States, occupied habitat is estimated to have increased by over 600 percent from 1961 until the present time. This increase has occurred despite recreational shooting and impacts from other factors.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that recreational shooting is not a limiting factor for the species. Consequently, we do not anticipate that impacts from recreational shooting are likely to negatively impact the status of the species in the foreseeable future.

We conclude that the best scientific and commercial information available indicates that the black-tailed prairie dog is not now, or in the foreseeable future, threatened by overutilization for commercial, recreational, scientific, or educational purposes to the extent that listing under the Act as a threatened or

endangered species is warranted at this time. Regulations specific to shooting are described under Factor D.

C. Disease and Predation

Plague is an exotic disease foreign to the evolutionary history of North American prairie dogs. It is caused by the bacterium *Yersinia pestis*, which fleas acquire by biting infected animals and subsequently transmit via a bite to other animals (Gage and Kosoy 2005, pp. 516-517). The disease can also be transmitted through pneumonic (airborne) or septicemic (blood) pathways from infected to disease-free animals (Barnes 1993, p. 28; Ray and Collinge 2005, p. 203; Cully *et al.* 2006, p. 158; Rocke *et al.* 2006, p. 243; Webb *et al.* 2006, p. 6236). Plague was first observed in wild rodents in North America near San Francisco, California, in 1903 (Eskey and Haas 1940, p. 1), and was first documented in black-tailed prairie dogs in Texas in 1946 (Miles *et al.* 1952, p. 41). Plague spread approximately 1,400 mi (2,250 km) eastward from its initial introduction in San Francisco into the species' habitat in approximately 40 years, but eastward expansion has since slowed (Adjemian *et al.* 2007, p. 365). Plague has only spread a few hundred miles in the past 50-60 years.

Plague is maintained in nature through fleas and certain rodent hosts that have sufficient resistance to maintain the disease at a low level of transmission with little evident mortality in animals carrying plague (enzootic cycle). Occasionally, the disease spreads from enzootic hosts to more susceptible animals, resulting in a rapidly spreading die-off affecting a large number of animals (epizootic cycle) (Barnes 1993, p. 29; Biggins and Kosoy 2001, p. 909; Cully and Williams 2001, p. 900; Gage and Kosoy 2005, pp. 506-508). The factors that cause a change from an enzootic to epizootic cycle are still being researched, but may include host density, flea density, and climatic conditions (Cully 1989, p. 49; Parmenter *et al.* 1999, p. 814; Cully and Williams 2001, pp. 899–903; Enscore *et al.* 2002, p. 186; Lomolino *et al.* 2003, pp. 118–119; Stapp *et al.* 2004, p. 237; Gage and Kosoy 2005, p. 509; Ray and Collinge 2005, p. 204; Stenseth *et al.* 2006, p. 13110; Adjemian *et al.* 2007, p. 372; Snäll *et al.* 2008, p. 246).

Black-tailed prairie dogs are very sensitive to plague, and mortality frequently reaches 100 percent (Barnes 1993, p. 28). Two patterns of die-offs are typically described for black-tailed prairie dogs: (1) A rapid and nearly 100 percent die-off with incomplete recovery, such as has occurred at the Rocky Mountain Arsenal and the Comanche National Grassland in Colorado (Cully and Williams 2001, pp. 899–903); and (2) a partial die-off resulting in smaller, but stable, populations and smaller, more dispersed colonies, such as has occurred at the Cimarron National Grassland in Kansas (Cully and Williams 2001, pp. 899–903) and Pawnee National Grassland in Colorado (Derner *et al.* 2006, p. 459).

Several reports have suggested that the response of black-tailed prairie dogs to plague may vary based on population density or degree of colony isolation (Cully 1989, p. 49; Cully and Williams 2001, pp. 899–903; Lomolino *et al.* 2003, pp. 118–119). Colony complexes with a history of recurring plague are typically composed of smaller colonies with greater intercolony distances. A frequent assumption of metapopulation conservation is that larger and closer populations are preferable to smaller and more isolated populations; however, this may not be the case when populations are exposed to a highly virulent pathogen such as plague that can be transferred from patch to patch by species movement (Johnson 2005, pp. 73-74).

Table 2 illustrates die-offs and extent of recovery for several well-studied sites that have experienced plague epizootics (outbreak), although some of these sites may have also been influenced by poisoning. Any conclusions as to decreasing or increasing trends in black-tailed prairie dog populations described in Table 2 are temporal in nature and site-specific. Long-term, large-scale population trends appear to be increasing.

TABLE 2. SITE-SPECIFIC POPULATION ESTIMATES OF OCCUPIED BLACK-TAILED PRAIRIE DOG HABITAT PRE- AND POST-PLAGUE (PP = POST-PLAGUE)

Site	1st Estimate	2nd Estimate	3rd Estimate	4th Estimate	5th Estimate	6th Estimate
Comanche NG, CO	5,000 (2,023), 1995 [1]	1,600 (647), 1999 [1] (PP)	10,700 (4,330), 2005 [1]	3,000 (1,214), 2006 [1] (PP)		
Meadow Springs Ranch, CO	3,336 (1,351), 2006 [2]	1,393 (564), 2007 [2] (PP)	360 (146), 2008 [2] (PP)			
Pawnee NG, CO	731 (296), 1998 [3]	744 (301), 1999 [4]	983 (398), 2000 [4]	3,300 (1,337), 2005 [5]	2,398 (971), 2008 [5] (PP)	
Pueblo Chemical Depot, CO	4,333 (1,753), 1998 [6]	67 (27), 2000 [6] (PP)	3,423 (1,385), 2005 [6]	2,712 (1,097), 2006 [6] (PP)		
Rocky Mt. Arsenal, CO	4,574 (1,851), 1988 [7]	247 (99), 1989 [7] (PP)	2,429 (982), 1994 [7]	22 (8), 1995 [7] (PP)	1,646 (666), 2000 [7]	314 (127), 2002 [8] (PP)
Cimarron NG, KS	1,716 (695), 1988 [3]	1,287 (521), 1998 [3]	1,688 (684), 1999 [4]	2,639 (1,069), 2001 [4]	3,321 (1,345), 2002 [9]	1,337 (541), 2008 (PP) [5]
CMR NWR, MT	4,859 (1,968), 2004 [10]	2,064 (836), 2007 [10] (PP)	1,729 (700), 2008 [10] (PP)			
Ft. Belknap Res., MT	24,000 (9,720), 1990 [11]	11,000 (4,455), 1996 [11] (PP)	13,475 (5,457), 1998 [11]	14,230 (5,763), 1999 [12]	12,987 (5,260), 2000 [12]	12,989 (5,261), 2002 [12]
N Cheyenne Res., MT	10,720 (4,338), 1990 [13]	378 (152), 1995 [14] (PP)	3,300 (1,335), 2002 [15]	3,913 (1,585), 2003 [15]	5,683 (2,299), 2006 [13]	

TABLE 2. SITE-SPECIFIC POPULATION ESTIMATES OF OCCUPIED BLACK-TAILED PRAIRIE DOG HABITAT PRE- AND POST-PLAGUE (PP = POST-PLAGUE)—Continued

Site	1st Estimate	2nd Estimate	3rd Estimate	4th Estimate	5th Estimate	6th Estimate
Kiowa/Rita Blanca NG, TX, OK, NM	1,600 (647), 1999 [9]	6,800 (2,751), 2003 [9]	4,500 (1,821), 2004 [9] (PP)	3,000 (1,214), 2005 [9] (PP)		
Cimarron County, OK	1,837 (744), 1967 [16]	5,500 (2,228), 1972 [17]	10,406 (4,214), 1989 [18]	2,370 (960), 1991 [19] (PP)	1,975 (800), 1999 [20]	13,523 (5,477), 2002 [21]
Buffalo Gap NG, SD	42,600 (17,253), 1980 [4]	13,270 (5,374), 1998 [3]	18,105 (7,333), 2002 [4]	~38,000 (15,400), 2007 [5]	28,993 (11,742), 2008 [5] (PP)	
Thunder Basin NG, WY	6,301 (2,552), 1980 [4]	18,340 (7,428), 1997 [4]	18,239 (7,387), 1998 [3]	15,864 (6,425), 2001 [4] (PP)	9,000 (3,642), 2003 [22] (PP)	3,700 (1,500), 2008 [5] (PP)

[1] Augustine *et al.* 2008
[2] Bachland 2008
[3] Sidle 1999
[4] Thompson 2002
[5] Sidle 2009b
[6] Young 2008
[7] Seery 2001
[8] Seery 2002
[9] Cully and Johnson 2006
[10] Dullum 2009
[11] FaunaWest 1998
[12] Vosburg 2002
[13] Larson 2008
[14] Fourstar 1998
[15] Vosburg 2003
[16] Tyler 1968
[17] Lewis and Hassien 1973
[18] Shackford *et al.* 1990
[19] Shaw *et al.* 1993
[20] Lomolino 1999
[21] Luce 2002
[22] Byer 2003

Some studies have documented the development of antibodies in black-tailed prairie dogs surviving a plague epizootic. Over 50 percent of survivors developed antibodies at one Colorado site (Pauli 2005, pp. 1, 71). The degree of evolved resistance, assuming little or no resistance initially, is not known. However, a preliminary assessment of natural resistance to plague found that prairie dogs collected from South Dakota (minimal plague), Texas (historical plague outbreaks), and Colorado (ongoing plague outbreaks) had differing levels of resistance. When challenged with the same doses of plague inoculum, nearly all South Dakota animals died, but 60 percent and 50 percent of animals from Texas and Colorado respectively survived over all doses (Rocke 2009, p. 1). Laboratory research indicates that at low levels of exposure a small percentage of black-tailed prairie dogs show some immune response and consequently some resistance to plague, indicating that development of a plague vaccine may be feasible (Creekmore *et al.* 2002, pp. 32, 38). Research on development of a plague vaccine has demonstrated significantly higher antibody levels and survival rates in vaccinated black-tailed prairie dogs that were challenged with the plague bacterium (Mencher *et al.* 2004, pp. 5, 8–9; Rocke *et al.* 2008, p. 930). Oral vaccination may be effective for managing plague epizootics in select free-ranging prairie dog populations by reducing mortality in exposed individuals (Mencher *et al.* 2004, pp. 8–9). However, we need to conduct field tests before using it as a management tool.

Since our last evaluation of the status of the black-tailed prairie dog in 2004, when it was removed from the candidate list, plague has expanded its range into South Dakota, previously the only State where plague had not been documented in prairie dogs (U.S. Fish & Wildlife Service 2005a, p. 1). The disease reached Conata Basin in 2008, despite 3 years of treating prairie dog burrows in portions of the affected area with insecticide in an effort to kill fleas and thereby limit plague transmission (a process referred to as ''dusting'').

Conata Basin is one of the largest remaining black-tailed prairie dog complexes and is the most successful recovery site in North America for the endangered black-footed ferret. Approximately 10,505 ac (4,251 ha) have been affected by plague through May 2009 in Conata Basin (Griebel 2009, p. 1). Within the plague zone, there are typically scattered individuals or small pockets of 1 to 2 ac (0.4 to 0.8 ha) where prairie dogs either have natural immunity or escaped exposure by chance (Griebel 2008, p. 4).

Plague has also been documented on Pine Ridge and Cheyenne River Reservations in South Dakota (Mann-Klager 2008, pp. 1-2). Creekmore *et al.* (2002, p. 38) noted that the establishment of sylvatic plague in South Dakota could have a substantial impact on population dynamics of both the black-tailed prairie dog and the black-footed ferret in South Dakota. However, at this time less than 2 percent of occupied habitat in the State has been affected by plague and occupied habitat continues to increase Statewide. Occupied habitat also continues to increase in States that have had plague present for more than 50 years.

Sylvatic plague remains a significant population stressor and the spread and effects of plague on the species could be exacerbated by climate change in the future. The extent to which the spread of plague may expand or contract in the future is not clear. Regardless of how plague is affected by climate change, the black-tailed prairie dog has proven to be

a resilient species. In spite of the past and current effects of plague and climate change and resulting impacts acting on the species, occupied habitat (a surrogate measure for population trends and status) in the United States has increased by more than 600 percent since the early 1960s. Although the effects of plague could be exacerbated by climate change in the future, the current status of the black-tailed prairie dog does not suggest that plague, or the combined effects of plague and climate change, are a limiting factors for the species in the foreseeable future, and we do not believe these will result in significant population-level impacts. The present or threatened curtailment of prairie dog habitat presented by climate change is addressed further under Factor E.

Tularemia and monkey pox are diseases that have had impacts on captive black-tailed prairie dogs associated with the pet trade; however, we have no information to indicate that either of these diseases are a concern for wild prairie dogs.

Many species prey upon the black-tailed prairie dog; however, we have no information to indicate that predation is a concern.

Summary of Factor C

Plague has expanded its range to all States within the range of the black-tailed prairie dog in recent years and has caused local population declines at several sites. These declines are typically followed by partial or complete recovery. Development of a vaccine to protect prairie dog populations has begun, and resistance to plague has been observed in some individuals. Since the early 1960s, occupied habitat has increased in every State, even in those States where plague has been present for over 50 years. Throughout the United States, occupied habitat is estimated to have increased by over 600 percent from 1961 until the present time. This increase has occurred despite continued impacts from plague and other factors.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that plague is not a limiting factor for the species. Although Sylvatic plague remains a population stressor and the spread and effects of plague on the species could be exacerbated by climate change in the long term future, the black-tailed prairie dog has proven to be a resilient species. In spite of the past and current effects of plague and climate change and resulting impacts on the species, black-tailed prairie dog occupied habitat (a surrogate measure for population trends and status) in the U.S. has increased by more than 600 percent since the early 1960s. Although the effects of plague could be exacerbated by climate change in the future, the current status of the black-tailed prairie dog does not suggest that the combined effects of climate change and plague, are a limiting factor for the species in the foreseeable future, and we do not believe these will result in significant population-level impacts. Consequently, we do not anticipate that impacts from the disease are likely to negatively impact the status of the species in the foreseeable future. Therefore, we have no reason to suspect that plague poses a significant threat to the species.

We conclude that the best scientific and commercial information available indicates that the black-tailed prairie dog is not now, or in the foreseeable future, threatened by disease or predation to the extent that listing under the Act as a threatened or endangered species is warranted at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Traditionally, resident species that are not federally threatened or endangered are usually managed by States or Tribes. Federal land management agencies may have additional management policies on their lands. The three primary means by which agencies can effectively influence black-tailed prairie dog populations are via shooting regulations, poisoning regulations, and proactive management. Detailed information regarding existing regulatory and management measures affecting the species is provided below.

Arizona

Classification – The species is classified as nongame (animals that are not traditionally hunted, fished, or trapped) (Voyles 2009, p. 2).

Shooting – A hunting license is required to shoot prairie dogs. The hunting season for black-tailed prairie dogs has been closed since 1999 (Voyles 2009, p. 2).

Poisoning – Toxicants are permitted for use on prairie dogs in Arizona, typically in conjunction with human health related to plague or safety concerns; however, plague has not been identified within the range of the black-tailed prairie dog in Arizona since its reintroduction in 2008, and no poisoning has occurred (Voyles 2009, p. 2).

Management Plans – Arizona is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (Van Pelt *et al.* 2001) for Arizona supports, but does not meet, the objectives described in the Multi-State Plan. The Statewide management plan for Arizona has not been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (Arizona Game and Fish Dept. 2006, pp. 443-445). However, this designation does not result in any protection for the species.

Colorado

Classification – The black-tailed prairie dog is classified as small game (CDOW 2009, p. 2).

Shooting – In 2006, the State removed the ban on hunting black-tailed prairie dogs on public land (Nesler 2009, p. 5). The hunting season is year-round on private land and June 15 through the end of February on public land. A small game license is required. There is no bag limit (CDOW 2009, p. 2).

Poisoning – Chemical control is jointly regulated by the Colorado Department of Agriculture, and the CDOW and is limited to those pesticides legally permitted for use on black-tailed prairie dogs. Prairie dogs may also be taken by use of explosive gases where necessary to control damage on private lands (CDOW 2009, p. 4).

Management Plans – Colorado is not a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (CDOW 2003) for Colorado supports and meets all of the objectives described in the Multi-State Plan. The Statewide management plan for Colorado has been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (CDOW 2006, p. 98). However, this designation does not result in any protection for the species.

Kansas

Classification – The Kansas Department of Wildlife and Parks classifies the species as wildlife (Kansas Department of Wildlife and Parks 2009, p. 1).

Shooting – The hunting season is year-round on private and public lands. A hunting license is required for residents and nonresidents. There is no bag limit (Kansas Department of Wildlife and Parks 2009, p. 2).

Poisoning – The most recent information available to us indicates that a permit is required to use any poisonous gas or smoke, but is not required to use above ground toxicants (Mitchener 2003, p. 2). According to Kansas Statutes 80-1201, 1202, and

1203, control may be legislated at a local level. For example, several townships have imposed mandatory control requirements. In some cases, landowners are instructed to control prairie dogs on their land; if they fail to do so, it is done by the county at the landowner's expense (Kansas Legislature 2009, pp. 1-8).

Management Plans – Kansas is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (Kansas Department of Wildlife and Parks 2002) for Kansas supports, but does not meet, all of the objectives described in the Multi-State Plan. Kansas does not meet the objective of maintaining at least 10 percent of total occupied area in complexes greater than 1,000 ac (405 ha) (Van Pelt 2009, p. 16). The Statewide management plan for Kansas has been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (Wasson *et al.* 2005, Appendix 1). However, this designation does not result in any protection for the species.

Montana

Classification – The species is classified as a vertebrate pest under the Montana Department of Agriculture (Bamber 2009, pp. 1-2). The State legislature allowed the dual status of ''nongame wildlife in need of management'' and ''vertebrate pest'' to expire in 2007 (Bamber 2009, pp. 1-2). A bill to resume dual classification and management of the black-tailed prairie dog failed to pass in the 2009 Montana legislative session (Hanauska-Brown 2009, p. 2).

Shooting – The hunting season is year-round on private and public lands. No hunting license is required for residents or nonresidents (Van Pelt 2009, p. 21). There is no bag limit.

Poisoning – Chemical control is regulated by the Montana Department of Agriculture. The Department employs a vertebrate pest specialist to assist Federal, State, and County agencies and private landowners with training and certification of pesticide applicators. There is no funding or personnel for the Montana Department of Agriculture to conduct prairie dog control programs. No control is currently occurring on Federal or tribal lands, and the level of control on private and State lands has remained stable in recent years (Bamber 2009, pp. 1-2).

Management Plans – Montana is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (Montana Department of Fish, Wildlife and Parks 2002) for Montana does not support or meet the occupied area objective. The Statewide management plan for Montana has been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (Montana Fish, Wildlife and Parks 2005, pp. 375-378). However, this designation does not result in any protection for the species.

Nebraska

Classification – The species is classified as unprotected nongame (Amack and Ibach 2009, p. 2).

Shooting – The hunting season is year-round on private and public lands. No hunting license is required for residents. Nonresidents must have a small game hunting license. There is no bag limit (Amack and Ibach 2009, p. 2).

Poisoning – Chemical control is regulated by the Nebraska Department of Agriculture and is limited to those pesticides legally permitted for use on black-tailed prairie dogs. The U. S. Animal and Plant Health Inspection Service and landowners conduct control work (Amack and Ibach 2009, p. 3).

Management Plans – Nebraska is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (Nebraska Game and Parks Commission 2001) for Nebraska supports, but does not meet, all of the objectives described in the Multi-State Plan. Nebraska does not meet the objective of managing or contributing to at least one complex greater than 5,000 ac (2,023 ha) and does not meet the objective of maintaining distribution throughout at least 75 percent of the historic range in the State (Van Pelt 2009, p. 26). The Statewide management plan for Nebraska has not been approved. The Statewide comprehensive wildlife strategy does not recognize the black-tailed prairie dog as a species of concern (Schneider *et al.* 2005, pp. 203, 236).

New Mexico

Classification – The species is not classified as having any status by the State other than that described by the Statewide comprehensive wildlife strategy (Van Pelt 2009, p. 28).

Shooting – The hunting season is year-round on private and public lands. No hunting license is required for residents. Nonresidents must have a hunting license (Van Pelt 2009, p. 28). There is no bag limit.

Poisoning – Chemical control is limited to pesticides legally permitted for use on black-tailed prairie dogs.

Management Plans – New Mexico is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (New Mexico Black-tailed Prairie Dog Working Group 2001) for New Mexico does not support or meet all of the objectives described in the Multi-State Plan. New Mexico does not support the objective of managing or contributing to at least one complex greater than 5,000 ac (2,023 ha), although it does meet that objective (Van Pelt 2009, p. 28). It does not meet the occupied area objective or the objective of maintaining distribution throughout at least 75 percent of the historic range in the State (Van Pelt 2009, p. 28). The Statewide management plan for New Mexico has been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (New Mexico Department of Game and Fish 2006, pp. 55, 577). However, this designation does not result in any protection for the species.

North Dakota

Classification – The species is classified as a pest species by the North Dakota Department of Agriculture (McKenna 2009, p. 1).

Shooting – The hunting season is year-round on private and public lands. No hunting license is required for residents. Nonresidents must have a nongame or furbearers license (McKenna 2009, p. 2). There is no bag limit.

Poisoning – Current regulations allow landowners to poison black-tailed prairie dogs if they are certified applicators (McKenna 2009, p. 2).

Management Plans – North Dakota is not a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (North Dakota Game and Fish Department 2001) for North Dakota does not support or meet all of the objectives described in the Multi-State Plan. North Dakota does not support any of the objectives and does not meet any objectives except distribution over at least 75 percent of the historical range (Van Pelt 2009, p. 24). The Statewide management plan for North Dakota has been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (Hagen *et al.* 2005, pp. 27, 305-307). However, this designation does not result in any protection for the species.

Oklahoma

Classification – The species is classified as wildlife-nongame (Van Pelt 2009, p. 30).

Shooting – The hunting season is year-round on private and public lands. Residents and nonresidents must have a valid State hunting license. There is no bag limit (Van Pelt 2009, p. 30).

Poisoning – A permit from the Oklahoma Department of Wildlife Conservation is required. No permit will be issued in a county with less than 100 ac (40 ha) of black-tailed prairie dog occupied habitat (Van Pelt 2009, p. 30).

Management Plans – Oklahoma is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 71). The Statewide management plan (Hoagland 2001) for Oklahoma supports, but does not meet all of the objectives described in the Multi-State Plan. Oklahoma does not meet the occupied area objective (Van Pelt 2009, p. 30). The Statewide management plan for Oklahoma has not been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (Oklahoma Department of Wildlife Conservation 2005, pp. 358, 360). However, this designation does not result in any protection for the species.

South Dakota

Classification – The State of South Dakota modified the designation of ''species of management concern'' for the black-tailed prairie dog by designating it as a pest if plague is reported east of the Rocky Mountains, the Statewide population is greater than approximately 145,000 ac (59,000 ha), or the species is colonizing within a 1 mi (1.6 km) buffer around concerned landowners (South Dakota State Legislature 2005, pp. 3-4). Currently, all of these criteria are being met; therefore, the species is considered a pest in South Dakota.

Shooting – The hunting season is year-round on private lands and open from June 15 through February 28 on public lands, except for a year-round closure in Conata Basin. Residents and nonresidents must have a valid South Dakota hunting license. There is no bag limit (Van Pelt 2009, p. 34).

Poisoning – Chemical control is limited to pesticides legally permitted for use on black-tailed prairie dogs.

Management Plans –South Dakota is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 72). The Statewide management plan (Cooper and Gabriel 2005) for South Dakota supports and meets all of the objectives described in the Multi-State Plan (Vonk and Even 2009, pp. 3-4). South Dakota's management plan also notes that the state has identified its own goals and objectives, specific to South Dakota, and reserves the right to preserve their own management authority. The Statewide management plan for South Dakota has been approved. The Statewide comprehensive wildlife strategy does not recognize the black-tailed prairie dog as a species of concern (South Dakota Department of Game, Fish, and Parks 2006, pp. 65-69).

Texas

Classification – The species is classified as nongame (Van Pelt 2009, p. 38).

Shooting – The hunting season is year-round on private and public lands. Residents and nonresidents must have a valid State hunting license. There is no bag limit for shooting. A nongame commercial dealer's permit is required for capture and selling of more than 25 individuals (Van Pelt 2009, p. 38).

Poisoning – Chemical control is limited to pesticides legally permitted for use on black-tailed prairie dogs.

Management Plans – Texas is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 72). The Statewide management plan (Texas Black-tailed Prairie Dog Working Group 2004) for Texas supports, but does not meet all of the objectives described in the Multi-State Plan. Texas does not meet the occupied area objective (Van Pelt 2009, p. 37). The Statewide management plan for Texas has been approved. The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (Texas Parks and Wildlife Department 2005, p. 744). However, this designation does not result in any protection for the species.

Wyoming

Classification – The species is classified as a nongame mammal by the Wyoming Game and Fish Department and as a pest by the Wyoming Department of Agriculture. A Memorandum of Understanding exists to coordinate management of the species between the two Departments if survey results indicate that occupied habitat for the species is less than the Wyoming Game and Fish Department objectives (Emmerich 2009, p. 3).

Shooting – The hunting season is year-round on private and public lands. Residents and nonresidents are not required to have a State hunting license. There is no bag limit for shooting (Van Pelt 2009, p. 40). Unlike most States, the Wyoming Game and Fish Commission has the authority to implement a shooting closure if it deems it necessary (Emmerich 2009, p. 3).

Poisoning – Chemical control is limited to pesticides legally permitted for use on black-tailed prairie dogs.

Management Plans – Wyoming is a signatory to the interstate Conservation Assessment and Strategy (Van Pelt 1999, p. 72). The Statewide management plan (Kruckenberg *et al.* 2001) for Wyoming supports and meets all of the objectives described in the Multi-State Plan. The Statewide management plan for Wyoming has not been approved. However, a grasslands conservation plan (Wyoming Game and Fish Department 2006, pp. 23-29, 94-130) addresses the species and has specific management objectives consistent with the Multi-State Plan (Emmerich 2009, pp. 3-4). The Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern (Wyoming Game and Fish Department 2005, pp. 10, 141-143). However, this designation does not result in any protection for the species.

Tribes

There are several Indian Reservations within the range of the black-tailed prairie dog in Montana, New Mexico, North Dakota, and South Dakota. However, we are only aware of nine Tribes that have black-tailed prairie dog occupied habitat within their Reservations (Cheyenne River Sioux Indian Reservation, SD; Crow Indian Reservation, MT; Crow Creek Indian Reservation, SD; Fort Belknap Indian Reservation, MT; Lower Brule Indian Reservation, SD; Northern Cheyenne Indian Reservation, MT; Pine Ridge Indian Reservation, SD; Rosebud Indian Reservation, SD; and Standing Rock Indian Reservation in ND and SD). Tribes did not provide any new information. It is our understanding that hunting black-tailed prairie dogs on tribal lands requires a permit. The season is typically year-round, and there are no bag limits. Poisoning is prohibited or requires a permit. Tribes generally meet or exceed their proportional requirements for occupied habitat, as described in the Multi-State Plan.

Federal Agencies

There are numerous Federal laws, acts, and policies in addition to the Act that encourage coordination of activities that may impact wildlife and promote conservation of wildlife. Some of the most frequently encountered that may influence black-tailed prairie dog management are described. The Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*) requires consultation between the Service and other Federal agencies and equal consideration of

wildlife conservation with water resource development programs. The Fish and Wildlife Conservation Act (16 U.S.C. 2901 *et seq.*) authorizes financial and technical assistance to States for the development of conservation plans and programs for nongame fish and wildlife. The National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) requires all Federal agencies to examine the environmental impacts of their actions, incorporate environmental information, and utilize public participation in the planning and implementation of all actions. Specific information for affected Federal agencies is provided as follows.

U.S. Air Force – The most recent available information indicates that no recreational shooting is allowed on Ellsworth Air Force Base and Badlands Bombing Range in South Dakota; however, some chemical control has been conducted (Morgenstern 2003, pp. 3-4). Similarly, at Buckley Air Force Base in Colorado there is no recreational shooting, but some chemical control (Friese 2003, pp. 2, 4). We have no information on black-tailed prairie dog management policies from other bases.

Department of Agriculture, U.S. Animal and Plant Health Inspection Service (APHIS) – APHIS, Wildlife Services (WS) does not manage any Federal lands. However, it supports prairie dog control programs in several States. In 2008, 129 projects were conducted regarding the control of black-tailed prairie dogs (primarily personal consultations) in Colorado, Nebraska, New Mexico, North Dakota, Oklahoma, Texas, and Wyoming (APHIS 2009, pp. 1-7). At a black-footed ferret reintroduction site in Kansas, the Service has an agreement with APHIS-WS to provide a staff person to control prairie dogs if neighboring landowners request control (LeValley 2009, pp. 1-2). APHIS-WS also has supported several research efforts in recent years regarding disease, control, non-target impacts that can be accessed on their website.

U.S. Army – The most recent available information indicates that the U.S. Army manages approximately 8,800 ac (3,600 ha) of black-tailed prairie dog occupied habitat (Hoefert 2002, pp. 2-6). The majority of occupied habitat (approximately 7,000 ac/2,800 ha) occurs on Fort Carson Garrison in Colorado (Larson 2008, p. 73).

U.S. Bureau of Indian Affairs – The U.S. Bureau of Indian Affairs' involvement in black-tailed prairie dog management has been principally through management of funding for prairie dog control programs on tribal lands in Montana, North Dakota, and South Dakota. The last large-scale chemical control effort for the species was directed by U.S. Bureau of Indian Affairs on the Pine Ridge/Oglala Sioux Reservation in South Dakota in the 1980s (Roemer and Forrest 1996, p. 353).

U.S. Bureau of Land Management – The most recent available information indicates that the U.S. Bureau of Land Management (BLM) manages approximately 39,000 ac (16,000 ha) of black-tailed prairie dog occupied habitat in Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, and Wyoming (Lawton 2003, p. 14). The BLM manages prairie dogs to meet multiple-use resource objectives including production of livestock forage and prevention of prairie dog encroachment onto adjacent lands. The BLM generally adheres to State regulations regarding shooting, although some additional closures exist at black-footed ferret recovery sites.

U.S. Environmental Protection Agency – The U.S. Environmental Protection Agency (EPA) influences regulatory mechanisms through its pesticide labeling programs that determine which pesticides can be legally used to poison prairie dogs, who can apply them, and what other label restrictions apply. The EPA has approved several chemicals for control of black-tailed prairie dogs. The impacts of poisoning by these chemicals are described in greater detail under ''Poisoning'' in Factor E below. Here, we describe the regulatory process employed by the EPA.

The EPA approved zinc phosphide as a legal prairie dog control chemical in 1973 (Forrest and Luchsinger 2006, p. 124). The EPA has not responded to our request to provide information on the amount of area poisoned with zinc phosphide or the amount of chemical sold. This information would enable us to better monitor the extent and effects of poisoning with zinc phosphide on black-tailed prairie dogs.

The EPA recently permitted the use of chlorophacinone and diphacinone (both anticoagulants) to poison prairie dogs. Use of these two chemicals to control prairie dogs constitutes new uses for these poisons. Since 2004, State agricultural departments have issued Special Local Needs permits under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S. C. 136 *et seq.*) Section 24(c) authorizing the use of chlorophacinone for poisoning prairie dogs in Colorado, Kansas, Nebraska, Oklahoma, Texas, and Wyoming and authorizing the use of diphacinone for poisoning prairie dogs in Colorado, Kansas, Nebraska, Texas, and Wyoming. In 2009, the EPA further broadened the potential scope of chlorophacinone by registering it under FIFRA section 3, which allows its use throughout the 11 States within the range of the black-tailed prairie dog. Prairie dogs are highly susceptible to both chlorophacinone and diphacinone, which is why the chemicals are popular as a control mechanism. Unlike zinc phosphide, secondary poisoning of several species is documented from chlorophacinone and diphacinone (Erickson and Urban 2004, pp. 48, 51; Lydick 2006, pp. 1-2; Klataske 2009, pp. 1-6; Service 2007, pp. 1-10).

We have limited information regarding the number of prairie dogs that are killed by anticoagulants or the amount of habitat treated. We are concerned about the impacts to both the black-tailed prairie dog and the secondary poisoning of other species, such as black-footed ferrets, other mammals, eagles, and other raptors. Despite this concern, the amount of habitat occupied by the black-tailed prairie dog throughout the United States increased by over 600 percent from 1961 until the present time.

U.S. Fish and Wildlife Service – The Service manages over 500 National Wildlife Refuges and their satellites, but only about 15 refuges, satellites, or Waterfowl Production Areas have black-tailed prairie dogs. Three refuges have a majority of occupied habitat on Service lands (approximately 6,000 ac/2,400 ha). On Charles M. Russell and UL Bend National Wildlife Refuges in Montana, black-tailed prairie dog habitat is managed to enhance its value as a black-footed ferret reintroduction site. The Rocky Mountain Arsenal National Wildlife Refuge in Colorado is managed to support black-tailed prairie dogs and a diversity of wildlife. Current Service management policy allows managers on Service lands to:

(1) control the species as needed for public health and safety,

(2) translocate up to 30 percent of the population annually with proper coordination with State wildlife agencies, and

(3) control the species to accommodate wildlife and habitat objectives after completion of a prairie dog management plan and evaluation by a Service review committee (Service 2005b, pp. 1-2).

Managers of Service lands are also encouraged to work cooperatively with neighboring landowners and local governments through the use of agreements and technical and financial assistance.

Department of Agriculture, U.S Forest Service – The U.S. Forest Service (USFS) reduced their restrictions on

poisoning by rescinding a 2000 policy letter regarding control of black-tailed prairie dogs and allowing expanded poisoning on their lands (Manning 2004, pp. 2-4). The USFS manages an estimated 57,606 ac (23,312 ha) of black-tailed prairie dog occupied habitat (Sidle 2009b, p. 3). The USFS manages prairie dogs to meet multiple-use resource objectives including production of livestock forage and prevention of prairie dog encroachment onto adjacent lands. Recreational shooting is typically regulated by the State and is allowed on most National Grasslands, although some additional closures exist at black-footed ferret recovery sites. In 2008, the USFS poisoned 3,679 ac (1,489 ha) of black-tailed prairie dog occupied habitat (Sidle 2009b, p. 3). This control addressed encroachment of prairie dogs onto adjacent private lands. Most of this (2,489 ac/1,008 ha) was on Buffalo Gap National Grassland. Nevertheless, lands poisoned on Buffalo Gap constitute less than 0.4 percent of occupied habitat in South Dakota.

U.S. National Park Service – The U.S. National Park Service manages approximately 13,777 ac (5,575 ha) of black-tailed prairie dog occupied habitat (Van Pelt 2009, p. 71). A majority of occupied habitat (8,993 ac/3,642 ha) occurs on Badlands National Park in South Dakota (Van Pelt 2009, p. 71). Some poisoning with zinc phosphide and shooting by National Park Service rangers occurs in boundary areas for ''good neighbor'' purposes (Davila 2009, p. 1). The most recent National Park Service guidance notes that black-tailed prairie dogs are managed under policies for conserving native species, but that some control may be necessary for ''good neighbor'' and human health reasons. The use of anticoagulants is not approved due to impacts on non-target species (Davila 2009, pp. 3-4).

Canada – The black-tailed prairie dog is designated as vulnerable by the Committee on the Status of Endangered Wildlife in Canada. The management plan for the black-tailed prairie dog in Canada notes that the species will be allowed to naturally fluctuate on land managed by the Province of Saskatchewan, but if colonies expand beyond their 2007 boundaries, the affected land manager may implement control measures under authority of a permit issued by Saskatchewan Environment, with nonlethal control measures encouraged (Tuckwell and Everest 2009, p. 15).

Mexico – The most recent available information indicates that there is no shooting of black-tailed prairie dogs and little chemical control in Mexico (List 2001, p. 1). The species is listed as threatened by the Lista de las Especies Amerzadas, the official endangered and threatened species list of the Mexican government (SEMARNAP 1994).

Summary of Factor D

The affected State and Federal agencies are engaged in black-tailed prairie dog management and monitoring to a much greater extent than they were 10 years ago, before creation of the Prairie Dog Conservation Team. Nevertheless, agencies continue to have conflicting policies regarding prairie dog management. For example, Kansas has an approved management plan that supports all of the objectives described in the Multi-State Plan, and their Statewide comprehensive wildlife strategy recognizes the black-tailed prairie dog as a species of concern. However, the State's only complex greater than 5,000 ac (2,023 ha), which satisfies an objective from the Multi-State Plan and is also a black-footed ferret recovery site, potentially could be reduced or eliminated by the Logan County Commission, which under state law has authority to control prairie dogs, against the landowners' wishes and at the landowners' expense (Haverfield and Haverfield 2009, pp. 1-6).

In some cases, Statewide occupied habitat is increasing in spite of, rather than because of, agency actions, which indicates that the species has been persistent despite state management contradictions. However, there is no evident correlation between the magnitude of increase in the species' population in a particular State and the extent to which a State is engaged in proactive management. Since the early 1960s, occupied habitat has increased in every State. Throughout the United States, occupied habitat is estimated to have increased by over 600 percent from 1961 until the present time. This increase has occurred despite regulatory mechanisms that favor control of the species and other factors.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that inadequate regulatory mechanisms are not a limiting factor for the species. Consequently, we do not anticipate that impacts from inadequate regulatory mechanisms are likely to negatively impact the status of the species in the foreseeable future.

We conclude that the best scientific and commercial information available indicates that the black-tailed prairie dog is not now, or in the foreseeable future, threatened by inadequate regulatory mechanisms to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Under this factor we evaluate poisoning, drought, and climate change.

Poisoning

Early poisoning of prairie dogs typically was conducted with strychnine and carbon bisulphide, with Compound-1080 becoming popular after World War II (Forrest and Luchsinger 2006, p. 122). Early poisoning efforts led to extirpation of the black-tailed prairie dog in Arizona by approximately 1940 (Arizona Game and Fish Dept. 1988, p. 26). Both Compound-1080 and strychnine can cause secondary poisoning of non-target predators and scavengers that prey on poisoned prairie dogs. Concern over secondary poisoning from strychnine and Compound-1080 led to a report by Cain *et al.* (1972, p. 6). The Council on Environmental Quality and the Department of the Interior requested this report and instructed the authors to evaluate existing animal control programs and provide recommendations. One of the recommendations was to remove from registration all toxicants used for predator control and those toxicants used for rodent control that resulted in secondary poisoning of non-target animals, because such methods were likely to be inhumane (Cain *et al.* 1972, pp. 5-6).

These recommendations led to Executive Order 11643, which in 1972 banned the use of toxicants that might cause secondary poisoning on public lands or via Federal programs. In 1982, this order was revoked by Executive Order 12342. However, poisoning prairie dogs with strychnine and Compound-1080 did not resume. The total area throughout the range of the species that was poisoned from 1915-1965 was likely more than 37 million ac (15 million ha) (Forrest and Luchsinger 2006, p. 120). The broad-scale, government sponsored poisoning that occurred during the first half of the twentieth century likely contributed to the species reaching a low point of 364,000 ac (147,000 ha) of occupied habitat in the early 1960s. Since then, poisoning has generally occurred on a more local scale and been conducted by individual landowners.

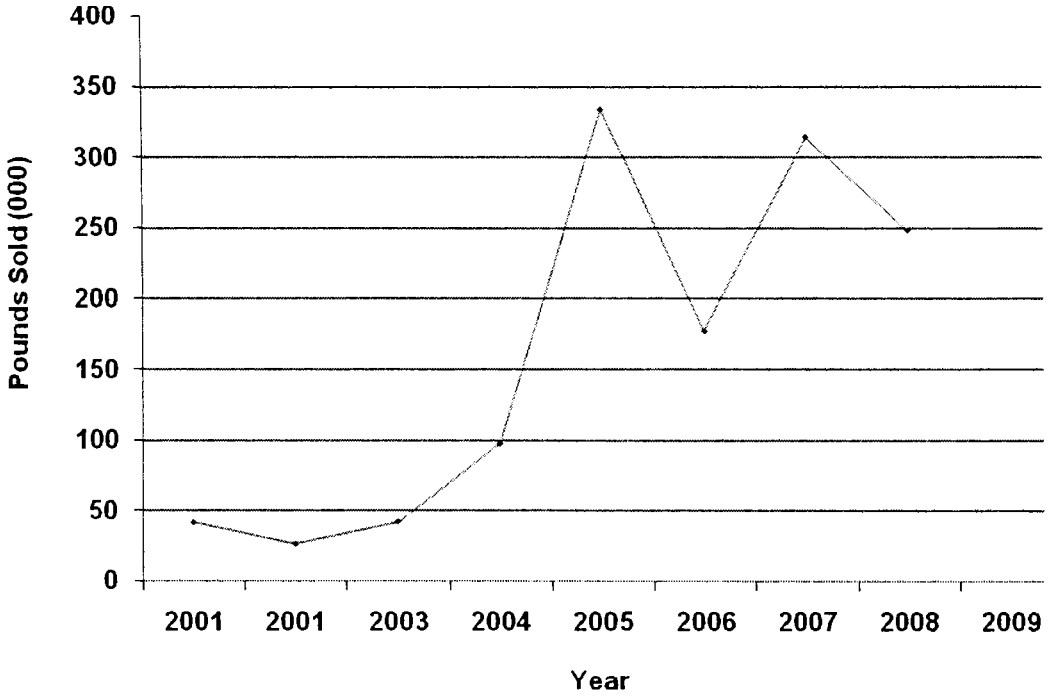
Since 1973, the two most commonly used toxicants have been zinc phosphide (administered via oats or other grain) and fumigants (administered via insertion into

burrows) (Forrest and Luchsinger 2006, p. 124). Both toxicants can pose a risk to non-target wildlife from primary exposure. In recent years anticoagulants such as chlorophacinone (trade name Rozol) and diphacinone (trade name Kaput) have become popular, as described under Factor D. In addition to risks of primary toxicity to non-target wildlife, these products pose a risk of secondary poisoning to non-target wildlife that is not a concern with zinc phosphide. These risks from secondary poisoning are similar to those raised 37 years ago by Cain *et al.* (1972, p. 6). Secondary poisoning has been documented in badgers (Lydick 2006, pp. 1-2; Klataske 2009, pp. 1-6) and a bald eagle (Service 2007, pp. 1-10) as a result of legal application of chlorophacinone for control of black-tailed prairie dogs.

Anticoagulants such as chlorophacinone and diphacinone cause a more prolonged period of distress for the black-tailed prairie dog prior to mortality than zinc phosphide. Anticoagulants act as blood thinners, with poisoned animals loosing blood through various orifices, including eventually the skin membranes, over a period of weeks (Erickson and Urban 2004, p. 3). For example, two weeks after an illegal application of chlorophacinone on 160 ac (65 ha) in South Dakota in 2005, we found dying prairie dogs. In contrast, zinc phosphide causes mortality in a matter of hours. We do not have any information on the amount of anticoagulants sold for prairie dog control or the amount of land treated.

The most complete information that we have regarding the amount of black-tailed prairie dog habitat poisoned or the amount of poison sold is from the South Dakota Department of Agriculture, which jointly manages prairie dog control with the South Dakota Department of Game, Fish and Parks. South Dakota is the only State that has been permitted by EPA to manufacture and sell zinc phosphide. Sales from the South Dakota bait station are largely limited to South Dakota, Wyoming, and Nebraska. The available information indicates that sales from the South Dakota bait station fluctuate, but in general have increased since we removed the black-tailed prairie dog from the candidate list in 2004 (Cerovski 2004, p. 101; Kempema 2007, p. 8). Figure 1 includes the total sales of zinc phosphide bait by the South Dakota bait station in the 4 years prior to candidate removal and the 4 years following candidate removal.

Figure 1. Sales of Zinc Phosphide Bait Prior (Fridley 2003, p. 2) and Subsequent to (Josten 2009, p. 3) our 2004 Removal of the Black-tailed Prairie Dog from the Federal Candidate List. Total sales for 2009 not yet tabulated.



Zinc phosphide sales do not necessarily reflect effective application. For example, individuals may stockpile poison, re-treat previously poisoned land, or apply it at rates different than the recommended rate of 1/3 pound per acre (Hygnstrom and Virchow 1994, p. B89). Additionally, the South Dakota bait station is only one of several suppliers of prairie dog poison. However, to provide some perspective, if all of the zinc phosphide bait were applied at the recommended rate of 1/3 pound per acre, enough poison has been sold by this one facility since removal of the black-tailed prairie dog from the candidate list in 2004 to theoretically poison over 3.5 million ac (1.4 million ha). This equates to more than all estimated occupied habitat in the United States with enough remaining to poison an additional one million ac (400,000 ha).

Some additional information regarding the extent of poisoning is available for other States within the range of the black-tailed prairie dog. In Kansas, an estimated 40,000 ac (16,200 ha) of private land have been poisoned recently (Van Pelt 2009, p. 16). There has been no indication of an increase in poisoning in Montana in recent years (Bamber 2009, p. 2). The most recent survey in North Dakota noted that approximately 43 percent of colonies on private land (approximately 9,700 ac/3,900 ha) had some indication of poisoning, although total occupied habitat increased (Knowles 2007, p. 2). An estimated 900 ac (400 ha) have been poisoned recently in Oklahoma (Van Pelt 2009, p. 30). The Texas Wildlife

Damage Management Service estimated 3,500 ac (1,420 ha) were poisoned in 2008 (Van Pelt 2009, p. 38). As described under Factor D, the USFS estimated 3,679 ac (1,490 ha) were poisoned on their lands in 2008; the majority was 2,489 ac (1,008 ha) in Buffalo Gap National Grassland, South Dakota, and 670 ac (271 ha) in Pawnee National Grassland, Colorado (Sidle 2009b, p. 3). No other recent estimates regarding poisoning were available.

If we total poison estimates for 2008 from the South Dakota Bait Station, Kansas, North Dakota, Oklahoma, Texas, and Pawnee National Grasslands, the amount of black-tailed prairie dog occupied habitat poisoned in 2008 was approximately 801,000 ac (324,000 ha), or 33 percent of estimated range wide occupied habitat. This figure does not include estimates for Montana or New Mexico, and only partial estimates are available for Colorado, Nebraska, and Wyoming.

In a review of available research, Andelt (2006, p. 135) concluded that colony size increases by about 30 percent annually for several consecutive years following poisoning; after intense but not total elimination, colony size can initially increase by as much as 71 percent annually. Colonies usually require 3 to 5 years to attain pre-treatment size. The author further notes that complete eradication with 100 percent mortality is ''formidably elusive.'' Earlier, government sponsored poisoning efforts such as those that led to the eradication of the black-tailed prairie dog in Arizona were likely more effective due to a synchronized effort by the Federal government over a large landscape. In recent years poisoning has typically been conducted over a smaller landscape such as the property of a single landowner. Despite the long-term and widespread poisoning of the black-tailed prairie dog, increasing population trends both range wide and Statewide indicate that localized poisoning is not adversely impacting the species' status and long-term conservation.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that poisoning is not a threat to the species. There is no evidence that poisoning poses a significant threat to the species now or into the future.

Drought

Drought is a natural and cyclical occurrence within the range of the black-tailed prairie dog to which the animal has adapted (Forrest 2005, p. 528). In at least some instances, occupied habitat tends to increase during periods of drought and densities decrease, because animals spread out in search of food (Young 2008, p. 5). However, we are aware of no information that quantifies the effect of drought, singly or in conjunction with other threats, on the species range wide.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, suggests that drought is not a limiting factor for the species. Therefore, we have no reason to suspect this poses a significant threat to the species.

Climate Change

No information on the direct relationship between climate change and black-tailed prairie dog population trends is available. However, climate change could potentially impact the species. According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 6), ''warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.'' Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50–year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 6). It is very likely that over the past 50 years cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent (IPCC 2007, p. 6). It is likely that heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 6).

Changes in the global climate system during the 21st century are likely to be larger than those observed during the 20th century (IPCC 2007, p. 19). For the next 2 decades, a warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007, p. 19). Afterward, temperature projections increasingly depend on specific emission scenarios (IPCC 2007, p. 19). Various emissions scenarios suggest that by the end of the 21st century, average global temperatures are expected to increase 0.6-4.0 °C (1.1-7.2 °F), with the greatest warming expected over land (IPCC 2007, p. 20).

The IPCC (2007, pp. 22, 27) report outlines several scenarios that are virtually certain or very likely to occur in the 21st century including:

(1) over most land, there will be warmer and fewer cold days and nights, and warmer and more frequent hot days and nights;

(2) areas affected by drought will increase; and

(3) the frequency of warm spells and heat waves over most land areas will likely increase.

The IPCC predicts that the resiliency of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change associated disturbances (e.g., flooding, drought, wildfire, and insects), and other global drivers. With medium confidence, IPCC predicts that approximately 20 to 30 percent of plant and animal species assessed so far are likely to be at an increased risk of extinction if increases in global average temperature exceed 1.5 – 2.5 °C (3 – 5 °F).

The black-tailed prairie dog, along with its habitat, will likely be affected in some manner by climate change. A shift in the species' geographic range may occur due to an increase in temperature and drought, although climate change would likely not pose as great a risk to prairie dog habitat as it would to species in polar, coastal, or montane ecosystems. Additionally, a strong relationship between plague outbreaks and climatic variables has been established (Parmenter *et al.* 1999, p. 814; Enscore *et al.* 2002, p. 186; Stapp *et al.* 2004, p. 237; Gage and Kosoy 2005, p. 509; Ray and Collinge 2005, p. 204; Stenseth *et al.* 2006, p. 13110; Adjemian *et al.* 2007, p. 372; Snäll *et al.* 2008, p. 246). The key climatic variables influencing plague appear to be maximum daily summer temperature (plague is enhanced by cooler summer temperatures) and late winter precipitation (plague is enhanced by increased precipitation). Modeling efforts indicate that shifts in plague distribution may be a result of shifts of pathogen, vector, or host distribution due to climate change scenarios (Nakazawa *et al.* 2007, p. 537). The distribution of plague may expand north and east (Nakazawa *et al.* 2007, p. 537). The recent expansion of plague into South Dakota supports this. However, variables associated with climate change and increased plague activity conflict. Plague is enhanced by cooler summer temperatures and by increased precipitation. Consequently, the extent to which plague may shift due to climate change versus expand or contract is supposition. Although the black-tailed prairie dog will likely be affected by climate change, it is not apparent that a net loss in occupied habitat or a significant impact to the status of the species will result. The species is adaptable to a wide array of

climes, as evidenced by a geographic range that includes 11 States, Canada, and Mexico. Unlike vulnerable species in polar, coastal, and montane ecosystems, a shift in range could be possible.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, indicates that climate change is not a threat to the species.

Summary of Factor E

Poisoning has impacted black-tailed prairie dogs from the early 1900s until the present time. Efforts to obtain more detailed information regarding the extent of poisoning, as well as efforts to interpret the additional recent impacts of anticoagulants, have been unsuccessful. Drought is a natural phenomenon throughout the range of the black-tailed prairie dog to which we believe the species has adapted. Continued climate change will likely cause shifts in the species' range, as well as changes in occurrence of plague. Additional information, particularly regarding impacts from poisoning and climate change, would improve our understanding of the effects on the species.

The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat since the early 1960s, shows that poisoning, drought, climate change, or other factors are not threats to the species. Consequently, we do not anticipate that impacts from these stressors are likely to negatively impact the status of the species in the foreseeable future.

We conclude that the best scientific and commercial information available indicates that the black-tailed prairie dog is not now, or in the foreseeable future, threatened by poisoning, drought, or climate change to the extent that listing under the Act as an endangered or threatened species is warranted at this time.

Finding

As required by the Act, we considered the five factors in assessing whether the black-tailed prairie dog is threatened or endangered throughout all or a significant portion of its range. We have carefully examined the best scientific and commercial information available regarding the status and the past, present, and future threats faced by the black-tailed prairie dog. We reviewed information provided by the petitioners, information in our files, other available published and unpublished information, and information provided by other interested parties during the status review. We also consulted with Federal and State land managers. On the basis of the best scientific and commercial information available, we find that the magnitude and imminence of threats do not indicate that the black-tailed prairie dog is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout its entire range.

There have been several impacts to the black-tailed prairie dog, in particular habitat loss due to conversion to cropland, sylvatic plague, and poisoning. Sylvatic plague and poisoning remain significant population stressors and are exacerbated by conflicting Federal and state management policies. Additionally, climate change may potentially impact the species in future decades. The effects of plague could be exacerbated by climate change in the future. However, the current status of the black-tailed prairie dog does not suggest that plague, or the combined effects of plague and climate change, are limiting factors for the species in the foreseeable future, and we do not believe these will result in significant population-level impacts. In spite of these stressors and resulting impacts on the species, occupied habitat (a surrogate measure for population trends and status) in the United States has increased by more than 600 percent since the early 1960s. The species has proven to be quite resilient and is not expected to be significantly affected by these stressors in the future.

Improved management and continued research regarding plague and climate change could further improve the status of the black-tailed prairie dog. Continuing research will help increase our understanding of how plague, climate change, and the combined effects of these stressors will affect the species in the future. This will allow for informed management decisions related to these stressors that could further improve the status of the species. It could also improve the status of the many species that depend upon the prairie dog as a food source or upon prairie dog burrows for shelter. The smaller, more scattered prairie dog complexes that are typical today cannot support the diversity of wildlife that historically depended upon the prairie dog. For example, the black-footed ferret requires large, healthy prairie dog complexes for its survival.

Our review of the information pertaining to the five factors does not support the assertion that there are threats of sufficient imminence, intensity, or magnitude to cause substantial losses of population distribution or viability of the black-tailed prairie dog. Therefore, we do not find that the black-tailed prairie dog is in danger of extinction (endangered), nor is it likely to become endangered within the foreseeable future (threatened) throughout its entire range. Therefore, listing the species as threatened or endangered under the Act is not warranted at this time.

Distinct Vertebrate Population Segments and Significant Portion of the Range

After assessing whether the species is threatened or endangered throughout its range, we next consider whether a distinct vertebrate population segment (DPS) exists or whether any significant portion of the black-tailed prairie dog's range meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened).

Distinct Vertebrate Population Segments

To interpret and implement the distinct vertebrate population segment (DPS) provisions of the Act, the Service and the National Oceanic and Atmospheric Administration published the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act* in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS Policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS:

(1) The discreteness of a population 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 Act's standards for listing, delisting, or reclassification.

Both discreteness and significance are required for a species population to meet our criteria for classification as a DPS. If any portion of a species population is considered a valid DPS, we may list, delist, or reclassify that DPS under the Act. We address these elements with respect to the black-tailed prairie dog.

Discreteness

Under the DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions.

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We do not consider any population segment of black-tailed prairie dog to be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. As a colonial species, black-tailed prairie dogs are naturally distributed across the landscape in a discontinuous fashion. Black-tailed prairie dog occupied habitat exists in a constantly shifting mosaic throughout an estimated 283 million ac (115 million ha) of suitable habitat that occurs across a range of approximately 440 million ac (178 million ha). Because this discontinuous distribution is the ''baseline'' condition for the species, for us to consider any geographic discontinuity as being evidence of marked separation (i.e., discreteness) under the DPS policy, we would need the best available information to indicate that the amount of discontinuity is over and above what is considered to be normal for the species.

We do not have detailed mapping of occupied habitat throughout the range of the species. We recognize the likely occurrence of some small, isolated black-tailed prairie dog colonies, but have very limited information available that identifies their locations. Therefore, we looked for other measures of discontinuity, such as measures of genetic or morphological differences as guided by the DPS policy, to determine whether any populations showed evidence of marked separation. There is minimal information available to us to indicate that any population segments express any genetic or morphological discontinuity due to separation from other prairie dog populations. We are aware of one study that found measurable genetic divergence in certain populations in Texas (Biggs 2007, p. 51). However, other studies have concluded that genetic differences are often as great among individuals from local populations as those from vastly different parts of their range (Chesser 1983, p. 329; Trudeau *et al.* 2004, p. 205). Therefore, we do not believe that genetic or morphological discontinuity provides evidence of discrete prairie dog populations.

The black-tailed prairie dog spans international boundaries between the United States, Canada, and Mexico, with approximately 98 percent of occupied habitat occurring in the United States. However, there are no substantial differences in exploitation, habitat management, or regulatory mechanisms between the three countries. Additionally, the relative distribution of prairie dogs between the three countries has remained constant in recent years. Therefore, we do not believe that international boundaries provide evidence of discrete prairie dog populations.

We determine, based on a review of the best available information, that no black-tailed prairie dog population segments meet the discreteness conditions of the 1996 DPS policy. Therefore, no black-tailed prairie dog population segment qualifies as a DPS under our policy and is not a listable entity under the Act. The DPS policy is clear that significance is analyzed only when a population segment has been identified as discrete. Because no discrete populations of black-tailed prairie dogs exist, we did not further analyze whether any populations meet the criteria in the DPS policy for significance.

Significant Portion of the Range (SPR)

Having determined that the black-tailed prairie dog does not meet the definition of a threatened or endangered species range wide or in a DPS, we must next consider whether there are any significant portions of the range where the black-tailed prairie dog is in danger of extinction or is likely to become endangered in the foreseeable future.

On March 16, 2007, a formal opinion was issued by the Office of the Solicitor of the Department of the Interior, ''The meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range''' (USDI 2007c). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) the portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered under section 4(c)(1) of the Act.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. A portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat, or if its location or characteristics make it less susceptible

to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, we evaluate the historical value of the portion and how frequently the portion is used by the species, if possible. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is necessarily a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

SPR Evaluation for black-tailed prairie dog

We evaluated the black-tailed prairie dog's current range in the context of the primary stressors affecting the species (plague, inadequate regulatory mechanisms, and poisoning) to determine if there is any apparent geographic concentration of these stressors. If effects to the species from all of these stressors are not disproportionate in any portion of the species' range, no portion is likely to warrant further consideration; and a determination of significance based upon resiliency, redundancy, or representation is not necessary.

Plague – We regard sylvatic plague as the most substantial impact on the black-tailed prairie dog at the present. However, with the spread of plague into South Dakota, the disease now is present in portions of every State within the species' range, and the effects of plague are presumably no longer geographically concentrated in the western portion of the range. The current status of the black-tailed prairie dog, as indicated by increasing trends in the species' occupied habitat in every State, since the early 1960s, indicates that plague is not a limiting factor for the species in any State. These increasing trends are evident even in States with a long history of plague. Plague does not appear to result in disproportionate impacts to the black-tailed prairie dog in any portion of its range. Therefore, a determination of significance based upon resiliency, redundancy, or representation is not necessary.

Inadequate regulatory mechanisms – We evaluated the differences in management between States. All States within the historical range of the black-tailed prairie dog demonstrate both positive and negative management practices with regard to the species. Some States are more engaged than others; however, all have had stable to increasing black-tailed prairie dog populations since 1961. Additionally, there is no evident correlation between the status of the species' population in a particular State and the extent to which a State is engaged in proactive management. Differences in management and the adequacy of regulatory mechanisms do not appear to result in disproportionate impacts to the black-tailed prairie dog in any portion of its range. Therefore, a determination of significance based upon resiliency, redundancy, or representation is not necessary.

Poisoning – The most complete information with regard to the extent of poisoning is probably available for Arizona, South Dakota, Kansas, North Dakota, Oklahoma, and Texas. Only partial estimates are available for Colorado, Nebraska, and Wyoming. Little or no information is available for Montana and New Mexico. However, black-tailed prairie dog populations have been stable to increasing in all States. Some of the most intensive poisoning we are aware of has occurred in South Dakota, which is also the State with the largest percentage increase in the species' population. Poisoning does not appear to result in disproportionate impacts to the black-tailed prairie dog in any portion of its range. Therefore, a determination of significance based upon resiliency, redundancy, or representation is not necessary.

We do not find that the black-tailed prairie dog is in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the black-tailed prairie dog as threatened or endangered under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, this species to our South Dakota Ecological Services Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor this species and encourage its conservation. If an emergency situation develops for this species or any other species, we will act to provide immediate protection.

References Cited

A complete list of all cited references is available on the Internet at *http://www.regulations.gov* and on request from the South Dakota Ecological Services Office (see **ADDRESSES** section).

Author

The primary authors of this document are the staff members of the U.S. Fish and Wildlife Service, South Dakota Ecological Services Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 18, 2009.

Sam D. Hamilton,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–28852 Filed 12–2–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

FWS-R4-ES-2009-0079 92210–1117–0000–B4

[RIN 1018-AW52]

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Vermilion Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the vermilion darter (*Etheostoma chermocki*) under the Endangered Species Act of 1973, as amended. We propose to designate as critical habitat approximately 21.0 kilometers (13.0 stream miles) in 5 units. The proposed critical habitat is

located within the Turkey Creek watershed in Jefferson County, Alabama.

DATES: We will accept comments from all interested parties until February 1, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by January 19, 2010.

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-R4-ES-2009-0079]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. 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: Cary Norquist, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, Mississippi, 39213; telephone: 601-321-1127; facsimile: 601-965-4340. 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 proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would be outweighed by threats to the species caused by the designation, such that the designation of critical habitat is not prudent.

(2) Comments or information that may assist us in identifying or clarifying the primary constituent elements.

(3) Specific information on:

• The amount and distribution of vermilion darter habitat,

• What areas occupied at the time of listing and that contain features essential to the conservation of the species which may require special management considerations or protections we should include in the designation and why, and

• What areas not occupied at the time of listing are essential for the conservation of the species and why.

(4) Land-use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities (e.g., small businesses or small governments) or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Information on any quantifiable economic costs or benefits of the proposed designation of critical habitat.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concern and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If your written comments provide 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.

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, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the vermilion darter, refer to the final listing rule published in the **Federal Register** on November 28, 2001 (66 FR 59367) and the Vermilion Darter Recovery Plan, available on the Internet at *http://ecos.fws.gov/docs/recovery_plan/070802.pdf*. See also the discussion of habitat in the Physical and Biological Features section below.

The vermilion darter is a narrowly endemic fish species, occurring in sparse, fragmented, and isolated populations. The species is only known in parts of the upper mainstem reach of Turkey Creek and four tributaries in Pinson, Jefferson County, Alabama (Boschung and Mayden 2004, p. 520). Suitable streams have pools of moderate current alternating with riffles of moderately swift current, and low water turbidity.

The vermilion darter was listed as endangered (66 FR 59367, November 28, 2001) because of ongoing threats to the species and its habitat from urbanization within the Turkey Creek watershed. The primary threats to the species and its habitat are degradation of water quality and substrate components due to sedimentation and other pollutants, and altered flow regimes from activities such as construction and maintenance activities; impoundments (five within the Turkey Creek and Dry Creek system); instream gravel extractions; off-road vehicle usage; road, culvert, bridge, gas, and water easement construction; and stormwater management (Drennen personal observation 1999-2009; Blanco and Mayden 1999, pp.18-20). These activities lead to water quality degradation and the production of pollutants (sediments, nutrients from sewage, pesticides, fertilizers, and industrial and stormwater effluents), stream channel instability, fragmentation, and reduced connectivity of the habitat by altering the stream banks and bottoms; degrading the riffles, runs, and pools; and producing changes in water quantity and flow necessary for spawning, feeding, resting, and other life history functions of the species.

Previous Federal Actions

The vermilion darter (*Etheostoma chermocki*) was listed as endangered under the Act on November 28, 2001 (66 FR 59367). The Service found that designation of critical habitat was prudent at the time of listing. However, due to budgetary constraints, we did not designate critical habitat at that time. We approved final recovery plan for the vermilion darter on June 20, 2007 (U.S. Fish and Wildlife Service 2007) and made it available to the public through a notice published in the **Federal Register** on August 2, 2007 (72 FR 42426).

On November 27, 2007, the Center for Biological Diversity filed a lawsuit against the Secretary of Interior for our failure to timely designate critical habitat for the vermilion darter (*Center for Biological Diversity* v. *Kempthorne* (07-CV-2928)). In a court-approved settlement agreement, the Service agreed to submit to the **Federal Register** a new prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by November 30, 2009, and a final designation by November 30, 2010.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and the landowner's obligation landowneris not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

To be considered for inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical or biological features that are essential to the conservation of the species. Areas supporting the essential physical or biological features are identified, to the extent known using the best scientific data available, as the habitat areas that provide essential life cycle needs of the species; (i.e., areas on which are found the primary constituent elements laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species). Habitat within the geographical area occupied by the species at the time of listing that contains features essential to the conservation of the species meets the definition of critical habitat only if these features may require special management consideration or protection. Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that the best available scientific data demonstrate that the designation of those areas is essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated information quality guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas we should designate as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat stream reaches. Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). From 2006 to 2007, drought conditions greatly reduced the habitat of the vermilion darter in Jefferson County (Drennen, pers. obs. 2007). Flucker *et al.* (2007, p. 10) and Drennen (pers. obs. 2007) reported that ongoing drought conditions, coupled with rapid urbanization within watersheds containing imperiled darters, render the populations vulnerable to anthropomorphic disturbances such as water extraction, vehicles within Turkey Creek and its tributaries, and increased clearing or draining of vulnerable wetlands and spring seeps; especially during the breeding season when the darters concentrate in specific habitat areas of Turkey Creek and its tributaries.

The information currently available on the effects of global climate change and increasing temperatures does not

make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the vermilion darter that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed critical habitat for this species; however, we specifically request information from the public on the currently predicted effects of climate change on the vermilion darter and its habitat. Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined based on the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), section 7 consultations, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

There is no documentation that the vermilion darter is threatened by taking or other human activity. In the absence of finding that the designation of critical habitat would increase threats to the species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation, under section 7 of the Act, in new areas for action in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) identifying the physical and biological features essential to the conservation of the vermilion darter and focusing conservation activities on these essential features and areas; (3) providing educational benefits to State or county governments or private entities engaged in activities or long-range planning in areas essential to the conservation of the species; and (4) preventing people from causing inadvertent harm to the species. Conservation of the vermilion darter and the essential features of the habitat will require habitat protection and restoration, which will be facilitated by knowledge of habitat locations and the physical and biological features of those habitats.

Therefore, since we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that the designation of critical habitat for the vermilion darter is prudent.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing ''to the maximum extent prudent and determinable.'' Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(2) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the vermilion darter, the historical distribution of the vermilion darter, and the habitat characteristics where they currently survive. This and other information represent the best scientific and commercial data available and led us to conclude that the designation of critical habitat is determinable for the vermilion darter.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining which areas within the geographical area occupied by the species at the time of listing contain the features essential to the conservation of the vermilion darter that may require special management considerations or protections, and which areas outside of the geographical area occupied at the time of listing are essential for the conservation of the species.

We reviewed the available information pertaining to historical and current distributions, life histories, and habitat requirements of this species. Our sources included peer-reviewed scientific publications; unpublished survey reports; unpublished field observations by Service, State, and other experienced biologists; notes and communications from qualified biologists or experts; and Service publications such as the final listing rule for the vermilion darter and the Recovery Plan for the Vermilion Darter.

Physical and Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features that are essential to the conservation of the species which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We consider the specific physical and biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial

arrangement for the conservation of the species. The PCEs required for the vermilion darter are derived from biological needs of the species as described in the Background section of this proposed rule and in the final listing rule (66 FR 59367). Unfortunately, little is known of the specific habitat requirements for this species other than that the species requires adequate water quality, water quantity, water flow, and a stable stream channel. To identify the physical and biological needs of the vermilion darter, we have relied on current conditions at locations where the species survives, the limited information available on this species and its close relatives, and factors associated with the decline and extirpation of fish species within the Mobile River Basin (U.S. Fish and Wildlife Service 2000, pp.6-13) and other similar watersheds.

Space for Individual and Population Growth and for Normal Behavior

Little is known about the specific space requirements of the vermilion darter within the Turkey Creek system; however, in general, darters depend on space from geomorphically stable streams with varying water quantities and flow. Vermilion darters are found in the transition zone between a riffle (shallow, fast water) or run (deeper, fast water) and a pool (deep, slow water) (Blanco and Mayden 1999, pp.18-20), usually at the head and foot of the riffles and downstream of the run habitat. Construction of impoundments in the Turkey Creek watershed has altered stream banks and bottoms; degraded the riffles, runs, and pools; and altered the natural water quantity and flow of the stream. A stable stream maintains its horizontal dimension and vertical profile (stream banks and bottoms), thereby conserving the physical characteristics of a stream, including bottom features such as riffles, runs, and pools and the transition zones between these features. The riffles, runs, and pools not only provide space for the vermilion darter, but also provide cover and shelter for breeding, reproduction, and growth of offspring.

In addition, the current range of the vermilion darter is reduced to localized sites due to fragmentation, separation, and destruction of vermilion darter populations. There are both natural (waterfall) and manmade (impoundments) dispersal barriers that not only contribute to the separation and isolation of vermilion darter populations, but also affect water quality. Fragmentation of the species' habitat has subjected these small isolated populations within the Turkey Creek system to genetic isolation and reduction of space for rearing and reproduction, population maintenance and reduction of adaptive capabilities, and increased likelihood of local extinctions (Hallerman 2003, pp. 363-364; Burkhead *et al.* 1997, pp 397-399). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental changes, and long-term viability (capability to live, reproduce, and develop) (Noss and Cooperrider 1994, pp. 282-297; Harris 1984, pp. 93-107). Long-term viability is founded on numerous interbreeding, local populations throughout the range (Harris 1984, pp.93-107). Continuity of water flow between suitable habitats is essential in preventing further fragmentation of the species' habitat and populations; conserving the essential riffles, runs, and pools needed by vermilion darters; and promoting genetic flow throughout the populations. Continuity of habitat will maintain spawning, foraging, and resting sites, as well as provide heterozygosity or gene flow throughout the population. Connectivity of habitats, as a whole, also permits improvement in water quality and water quantity by allowing an unobstructed water flow throughout the connected habitats.

Based on the biological information and needs discussed above, it is essential to protect riffles, runs, and pools, and the continuity of these structures, to accommodate feeding, spawning, growth, and other normal behaviors of the vermilion darter and to promote genetic flow within the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Water Quantity and Flow

Much of the cool, clean water provided to the Turkey Creek main stem comes from consistent and steady groundwater sources (springs) that contribute to the flow and water quantity in the tributaries (Beaver Creek, Dry Creek, Dry Branch, and the unnamed tributary to Beaver Creek). Flowing water provides a means for transporting nutrients and food items, moderating water temperatures and dissolved oxygen levels, and diluting non-point and point source pollution. Impoundments within Turkey and Dry creeks not only serve as dispersal barriers but have also altered stream flows from natural conditions. Without clean water sources, water quality and water quantity would be considerably lower and would significantly impair the normal life stages and behavior of the vermilion darter.

Favorable water quantity is an average daily discharge of over 50 cubic feet per second within the Turkey Creek main stem (U.S. Geological Survey 2009, compiled from average annual statistics). Along with this average daily discharge, both minimum and flushing flows are necessary within the tributaries to maintain all life stages and to remove fine sediments and dilute other pollutants (Drennen personal observation, February 2009a; Instream Flow Council 2004, pp.103-104, 375; Gilbert *et al.* eds. 1994, pp. 505-522; Moffett and Moser 1978, pp. 20-21). These flows are supplemented by groundwater and contribute to the overall stream cleansing effect by adding to the total flow of high-quality water. This, in turn, helps in maintenance of stream banks and bottoms, essential for normal life stages and behavior of the vermilion darter.

Water Quality

Factors that can potentially alter water quality are decreases in water quantity through droughts and periods of low seasonal flow, precipitation events, non-point source runoff, human activities within the watershed, random spills, and unregulated discharge events (Instream Flow Council 2004, pp.29-50). These factors are particularly harmful during drought conditions when flows are depressed and pollutants are concentrated. Impoundments also affect water quality by reducing water flow, altering temperatures, and concentrating pollutants (Blanco and Mayden 1999, pp. 5-6, 36). Nonpoint-source pollution and alteration of flow regimes are primary threats to the vermilion darter in the Turkey Creek watershed.

Aquatic life, including fish, require acceptable levels of dissolved oxygen. The type of organism and its life stage determine the level of oxygen required. Generally, among fish, cold water species and young life forms are the most sensitive. The amount of dissolved oxygen that is present in the water (the saturation level) depends upon water temperature. As the water temperature increases, the saturated dissolved oxygen level decreases. The more oxygen there is in the water, the greater the assimilative capacity (ability to consume organic wastes with minimal impact) of that water; lower water flows have a reduced assimilative capacity (Pitt 2000, pp. 6-7). Low-flow conditions affect the chemical environment occupied by the fish, and extended low-flow conditions coupled with higher pollutant levels would likely result in behavior changes within all life stages, but could be particularly detrimental to

early life stages (e.g., eggs, larvae, and juveniles).

Optimal water quality lacks harmful levels of pollutants, such as inorganic contaminants like copper, arsenic, mercury, and cadmium; organic contaminants such as human and animal waste products; endocrine-disrupting chemicals; pesticides; nitrogen, potassium, and phosphorous fertilizers; and petroleum distillates. Sediment is the most abundant pollutant produced in the Mobile River Basin (Alabama Department of Environmental Management 1996, pp.13-15). Siltation (excess sediments suspended or deposited in a stream) contributes to turbidity of the water and has been shown to suffocate aquatic insects, smother fish eggs, clog fish gills, and fill in essential interstitial spaces (spaces between stream substrates) used by aquatic organisms for spawning and foraging; therefore, siltation negatively impacts fish growth, physiology, behavior, reproduction, and survival. Nutrification (excessive nutrients present, such as nitrogen and phosphorous) promotes heavy algal growth that covers and eliminates clean rock or gravel habitats necessary for vermilion darter feeding and spawning. High conductivity values are an indicator of hardness and alkalinity and may denote water nitrification (Hackney *et al.* 1999, pp.99-103). Generally, early life stages of fishes are less tolerant of environmental contamination than adults or juveniles (Little *et al.* 1993, pp. 67).

Appropriate water quality and quantity are necessary to dilute impacts from storm water and other non-natural effluents. Harmful levels of pollutants impair critical behavior functions in fish and are reflected in population-level responses (reduced population size, biomass, year class success, etc.). Adequate water quantity and flow and good to optimal water quality are essential for normal behavior, growth, and viability during all life stages.

The vermilion darter requires relatively clean, cool flowing water within the Turkey Creek main stem and tributaries. The Clean Water Act (33 U.S.C. 1251 *et seq.*), Water Quality Act (Pub. L. 100-4) and Alabama Water Pollution Control Act (Ala. Code § 22-22-1) establish guidelines for water usage and standards of quality for the State's waters necessary to preserve and protect aquatic life. Essential water quality attributes for darters and other fish species in fast to middle water flow streams include: dissolved oxygen levels greater than 6 parts per million (ppm), temperatures between 7 ° and 26.7 °Celsius (C) (45 ° and 80 °Fahrenheit (F)) with spring egg incubation temperatures from 12.2 ° to 18.3 °C (54 ° to 65 °F), a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of less than approximately 225 micro Siemens per centimeter at 26.7 °C (80 °F), and low concentrations of free or suspended solids (organic and inorganic sediments) less than 10 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) and 15 mg/L Total Suspended Solids (TSS; measured as mg/L of sediment in water) (Teels *et al.* 1975, pp. 8-9; Ultschet *et al.* 1978, pp. 99-101; Ingersoll *et al.* 1984, pp. 131-138; Kundell and Rasmussen 1995, pp. 211-212; Henley *et al.* 2000, pp. 125-139; Meyer and Sutherland 2005, pp. 43-64).

Food

The vermilion darter is a benthic (bottom) insectivore consuming larval chironomids (midges), tipulids (crane flies), and hydropsychids (caddisflies), along with occasional microcrustaceans (Boschung and Mayden 2004, p. 520; Khudamrongsawat *et al.* 2005, p.472). Caddisflies and crane flies are pollution sensitive organisms found in good to fair water quality (Auburn University 1993, p.53). Variation in instream flow maintains the stream bottom where food for the vermilion darter is found, transports these organisms, and provides oxygen and other attributes to various invertebrate life stages. Sedimentation has been shown to wear away and suffocate periphyton (organisms that live attached to objects underwater) and disrupt aquatic insect communities (Waters 1995, pp. 53-86; Knight and Welch 2001, pp. 132-135). In addition, nutrification promotes heavy algal growth that covers and eliminates the clean rock or gravel habitats necessary for vermilion darter feeding and spawning. A decrease in water quality and instream flow will correspondingly decrease the major food species for the vermilion darter. Thus, food availability for the vermilion darter is affected by instream flow and water quality.

Based on the biological information and needs discussed above, we believe it is essential that vermilion darter habitat consist of unaltered, connected, stable streams to maintain flow, prevent sedimentation, and promote good water quality absent harmful pollutants.

Cover or Shelter (Sites for Breeding, Reproduction or Rearing)

Vermilion darters depend on specific bottom substrates for normal and robust life processes such as spawning, rearing, protection of young during life stages, protection of adults when threatened, foraging, and feeding. These bottom substrates are dominated by fine gravel, along with some sand, coarse gravel, cobble, and bedrock (Blanco and Mayden 1999, pp. 24-26; Drennen personal observation, February 2009b). The vermilion darter prefers small-sized gravel for spawning substrates (Blanchard and Stiles 2005, pp.1-12). Occasionally, there are also small sticks and limbs on the bottom substrate and within the water column (Stiles pers. comm., September 1999; Drennen personal observation, May 2007).

Excessive fine sediments of small sands, silt, and clay may embed in the larger substrates, filling in interstitial spaces between these structures. Loss of these interstitial areas removes spawning and rearing areas, foraging and feeding sites, and escape and protection localities (Sylte and Fischenich 2002, pp. 1-25). In addition, dense, filamentous algae growth on the substrates may restrict or eliminate the usefulness of the interstitial spaces by the vermilion darter.

Geomorphic instability within the streambed and along the banks results in scouring and erosion of these areas, leading to sedimentation and loss of shelter and cover for vermilion darters, their eggs, and their young. This fine sediment deposition also reduces the area available for food sources, such as macroinvertebrates and periphyton (Tullos 2005, pp. 80-81).

Thus, based on the biological information and needs above, essential vermilion darter habitat consists of stable streams with a stream flow sufficient to remove sediment and eliminate the filling in of interstitial spaces and substrate to accommodate spawning, rearing, protection of young, protection of adults when threatened, foraging, and feeding.

Primary Constituent Elements for Vermilion Darter

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of vermilion darter. The physical and biological features are the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential to the conservation of the species. Areas designated as critical habitat for vermilion darter contain only occupied areas within the species' historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of vermilion darter and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs specific to vermilion darter are:

(1) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain t bottom features (riffles, runs, and pools) and transition zones between bottom features , to continue appropriate habitat to maintain essential riffles, runs, and pools, to promote connectivity between spawning, foraging and resting sites, and to maintain gene flow throughout the population.

(2) Instream flow regime with an average daily discharge over 50 cubic feet per second, inclusive of both surface runoff and groundwater sources (springs and seepages).

(3) Water quality with temperature not exceeding 26.7 °C (80 °F), dissolved oxygen 6.0 milligrams or greater per liter, turbidity of an average monthly reading of 10 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) and 15mg/l Total Suspended Solids (TSS; measured as mg/l of sediment in water) or less; and a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of no greater than 225 micro Siemens per centimeter at 26.7 ° C (80 °F).

(4) Bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates.

With this proposed designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the species. Each of the areas proposed as critical habitat in this rule contains sufficient PCEs to provide for one or more of the life history functions of the vermilion darter.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the physical and biological features that are essential to the conservation of the species and whether those features may require special management considerations or protection.

The five units we are proposing for designation as critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the species. None of the proposed critical habitat units are presently under special management or protection provided by a legally operative plan or agreement for the conservation of the vermilion darter. Various activities in or adjacent to the critical habitat units described in this proposed rule may affect one or more of the PCEs. For example, features in the proposed critical habitat designation may require special management due to threats posed by urbanization activities (such as stream channel modification for flood control or gravel extraction) that could cause an increase in bank erosion; by significant changes in the existing flow regime within the streams due to water diversion or withdrawal; by significant alteration of water quality; by significant alteration in the quantity of groundwater and alteration of spring discharge sites; by significant changes in stream bed material composition and quality due to construction projects and maintenance activities; by off-road vehicle use; by gas and water easements; by bridge construction; by culvert installation; by stormwater management; and by other watershed and floodplain disturbances that release sediments or nutrients into the water. Other activities that may affect PCEs in the proposed critical habitat units include those listed in the ''Effects of Critical Habitat'' section below.

As stated above, designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the vermilion darter. Activities with a Federal nexus that may affect areas outside of critical habitat, such as development; road construction and maintenance; oil, gas, and utility easements; and effluent discharges, are still subject to review under section 7 of the Act if they may affect the vermilion darter, because Federal agencies must consider both effects to the species and effects to critical habitat independently. The Service should be consulted for disturbances to areas both within the proposed critical habitat unist as well as upstream of those areas known to support vermilion darter, including springs and seeps that contribute to the instream flow in the tributaries, especially during times when stream flows are abnormally low (i.e., during droughts). The prohibitions of section 9 of the Act against the take of listed species also continue to apply both inside and outside of designated critical habitat.

Criteria Used to Identify Proposed Critical Habitat

Using the best scientific and commercial data available, as required by section 4(b)(1)(A) of the Act, we identified those areas to propose for designation as critical habitat that, within the geographical area occupied by the species at the time of listing, possess those physical and biological features essential to the conservation of the vermilion darter which may require special management considerations or protection. We also considered the area outside the geographical area occupied by the species at the time of listing for any areas that are essential for the conservation of the vermilion darter.

We used information from surveys and reports prepared by the Alabama Department of Conservation and Natural Resources, Alabama Geological Survey, Samford University, University of Alabama, and the Service to identify the specific locations occupied by the vermilion darter. Currently, occupied habitat for the species is limited and isolated. The species is currently located within the upper mainstem reaches of Turkey Creek and four tributaries: unnamed tributary to Beaver Creek, Beaver Creek, Dry Creek, and Dry Branch in Pinson, Jefferson County, Alabama (Blanco and Mayden 1999, pp.18-20; Drennen pers. observ. March 2008).

Following the identification of the specific locations occupied by the vermilion darter, we determined the appropriate length of stream segments by identifying the upstream and downstream limits of these occupied sections necessary for the conservation of the vermilion darter. Because populations of vermilion darters are isolated due to dispersal barriers, to set the upstream and downstream limits of each critical habitat unit, we identified landmarks (bridges, confluences, road crossings, and dams) above and below the upper and lowermost reported locations of the vermilion darter in each stream reach to ensure incorporation of all potential sites of occurrence. These stream reaches were then digitized using 7.5' topographic maps and ARCGIS to produce the critical habitat map.

We are proposing to designate as critical habitat all stream reaches in occupied habitat. We have defined ''occupied habitat'' as those stream reaches occupied at the time of listing and still known to be occupied by the vermilion darter ; these stream reaches comprise the entire known range of the

vermilion darter. We are not proposing to designate any areas outside the known range of the species because the historical range of the vermilion darter, beyond currently occupied areas, is unknown and dispersal beyond the current range is not likely due to dispersal barriers.

The five proposed units contain one or more of the PCEs in the appropriate quantity and spatial arrangement essential to the conservation of this species and support multiple life processes for the vermilion darter.

When identifying proposed critical habitat boundaries, we make every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands usually lack PCEs for endangered or threatened species. Areas proposed for critical habitat for the vermilion darter below include only stream channels within the ordinary high water line and do not contain any developed areas or structures.

Proposed Critical Habitat Designation

We are proposing to designate 5 units, totaling approximately 21.0 km (13.0 mi), as critical habitat for the vermilion darter. The critical habitat units described below constitute our best assessment of areas that currently meet the definition of critical habitat for the vermilion darter. Table 1 identifies the proposed units for the species; shows the occupancy of the units; the approximate extent proposed as critical habitat for the vermilion darter; and ownership of the proposed designated areas.

TABLE 1—OCCUPANCY AND OWNERSHIP OF PROPOSED CRITICAL HABITAT UNITS FOR THE VERMILION DARTER.

Unit	Location	Occupied	Private Ownership Stream Kilometers (Miles)	State, County, City Ownership Stream Kilometers (Miles)	Total
1	Turkey Creek	Yes	14.9 (9.2)	0.3 (0.2)	15.2 (9.4)
2	Dry Branch	Yes	0.7 (0.4)	-	0.7 (0.4)
3	Beaver Creek	Yes	0.9 (0.6)	0.1 (< 0.1)	1.0 (0.6)
4	Dry Creek	Yes	0.6 (0.4)	-	0.6 (0.4)
5	Unnamed Tributary to Beaver Creek	Yes	3.3 (2.0)	0.4 (0.2)	3.7 (2.2)
	TOTAL		20.4 (12.6)	0.8 (0.5)	21.2 (13.1)

We present brief descriptions of each unit and reasons why they meet the definition of critical habitat below. The proposed critical habitat units include the stream channels of the creek and tributaries within the ordinary high water line. As defined in 33 CFR 329.11, the ordinary high water line on nontidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural water line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. In Alabama, the riparian landowner owns the stream to the middle of the channel.

For each stream reach proposed as a critical habitat, the upstream and downstream boundaries are described generally below; more precise descriptions are provided in the Regulation Promulgation at the end of this proposed rule.

Unit 1: Turkey Creek, Jefferson County, Alabama

Unit 1 includes 15.2 km (9.4 mi) in Turkey Creek from Shadow Lake Dam downstream to the Section 13/14 (T15S, R2W) line, as taken from the U.S. Geological Survey 7.5 topographical map (Pinson quadrangle).

Approximately 14.9 km (9.2 mi), or 98 percent of this area is privately owned. The remaining 0.3 km (0.2 mi), or 2 percent is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

Turkey Creek supports the most abundant and robust populations of the vermilion darter in the watershed. Populations of vermilion darters are small and isolated within specific habitat sites of Turkey Creek from Shadow Lake dam downstream to the old strip mine pools (13/14 S T15S R2W section line, as taken from the U.S. Geological Survey 7.5 topographical map (Pinson quadrangle)). We consider the entire reach of Turkey Creek that composes Unit 1 to be occupied.

One of the three known spawning sites for the species is located within the confluence of Turkey Creek and Tapawingo Spring run (PCE 4). In addition, Turkey Creek provides the most darter habitat for the vermilion darters with an abundance of pools, riffles, and runs (PCE 1). These geomorphic structures provide the species with spawning, foraging, and resting areas (PCEs 1 and 4), along with good water quality, quantity, and flow, which support the normal life stages and behavior of the vermilion darter and the species' prey sources (PCEs 2 and 3).

There are five impoundments in Turkey Creek (Blanco and Mayden 1999, pp. 5-6, 36, 63) limiting the connectivity of the range and expansion of the species into other units and posing a risk of extinction to the species due to changes in flow regime, habitat, water quality, water quantity, and stochastic events such as drought. These impoundments accumulate nutrients and undesirable fish species that could propose threats to vermilion darters and the species' habitat. Other threats to the

vermilion darter and its habitat in Turkey Creek that may require special management and protection of PCEs include the potential of: urbanization activities (such as channel modification for flood control or gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to water diversion or withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, gas and water easements, bridge construction, culvert installation, stormwater management, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 2: Dry Branch, Jefferson County, Alabama

Unit 2 includes 0.7 km (0.4 mi) of Dry Branch from the bridge at Glenbrook Road downstream to the confluence with Beaver Creek.

Almost all of the 0.7 km (0.4 mi) or close to 100 percent of this area is privately owned. Less than 1 percent of the area is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

Dry Branch provides supplemental water quantity to Turkey Creek proper (Unit 1) and provides connectivity to additional bottom substrate habitat and possible spawning sites (PCEs 1, 3, and 4). One of the three known spawning sites for the species is located within the confluence of this reach (PCE 1 and 4) and Beaver Creek.

Threats to the vermilion darter and its habitat at Dry Branch that may require special management and protection of PCEs 1, 3, and 4 include the potential of: urbanization activities (such as channel modification for flood control, impoundments, gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to construction of impoundments, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, gas and water easements, bridge construction, culvert installation, stormwater management, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 3: Beaver Creek, Jefferson County, Alabama

Unit 3 includes 1.0 km (0.6 mi) of Beaver Creek from the confluence with the unnamed tributary to Beaver Creek downstream to the confluence with Turkey Creek.

Almost 0.9 km (0.6 mi), or 94 percent of this area is privately owned. The remaining 0.1 km (< 0.1 mi), or 6 percent is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

Beaver Creek supports populations of vermilion darters, and provides supplemental water quantity to Turkey Creek proper (PCEs 1 and 2). The reach also contains adequate bottom substrate for vermilion darters to use in spawning, foraging, and other life processes (PCE 4). Beaver Creek makes available additional habitat and spawning sites, and offers connectivity with other vermilion darter populations within Turkey Creek, Dry Branch, and the unnamed tributary to Beaver Creek (PCEs 1 and 4).

Threats to the vermilion darter and its habitat at Beaver Creek that may require special management of PCEs 1, 2, and 4 include the potential of: urbanization activities (such as channel modification for flood control, impoundments, gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, gas and water easements, bridge construction, culvert installation, stormwater management, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 4: Dry Creek, Jefferson County, Alabama

Unit 4 includes 0.6 km (0.4 mi) of Dry Creek from Innsbrook Road downstream to the confluence with Turkey Creek.

Almost 0.6 km (0.4 mi), or 100 percent of this area is privately owned.

Dry Creek supports populations of vermilion darters and provides supplemental water quantity to Turkey Creek proper (PCEs 1 and 2). The reach also contains adequate bottom substrate for vermilion darters to use in spawning, foraging, and other life processes (PCE 4). Dry Creek makes available additional habitat and spawning sites, and offers connectivity with vermilion darter populations in Turkey Creek (PCE 1).

There are two impoundments in Dry Creek (Blanco and Mayden 1999, pp. 56, 62) which limit the range and expansion of the species within the unit and increases the risk of extinction due to changes in flow regime, habitat or water quality, water quantity, and stochastic events such as drought. These impoundments amass nutrients and undesirable fish species that could propose threats to vermilion darters and to its habitat. Threats that may require special management and protection of PCEs include: urbanization activities (such as channel modification for flood control and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to future impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, gas and water easements, bridge construction, culvert installation, stormwater management, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Unit 5: Unnamed Tributary to Beaver Creek, Jefferson County, Alabama

Unit 5 includes 3.7 km (2.3 mi) of the unnamed tributary of Beaver Creek from the Section 12/11 (T16S, R2W) line, as taken from the U.S. Geological Survey 7.5 topographical map (Pinson quadrangle), downstream to its confluence with Beaver Creek.

Almost 3.3 km (2.1 mi), or 89 percent of this area is privately owned. The remaining 0.4 km (0.2 mi), or 11 percent is publicly owned by the City of Pinson or Jefferson County in the form of bridge crossings and road easements.

The unnamed tributary to Beaver Creek supports populations of vermilion darters and provides supplemental water quantity to Turkey Creek proper (PCEs 1 and 2). The unnamed tributary to Beaver Creek has been intensely geomorphically changed by man over the last 100 years. The majority of this reach has been modified for flood control, as it runs parallel to Highway 79. There are several bridge crossings, and the reach has a history of industrial uses along the bank. However, owing to the groundwater effluent that constantly supplies this reach with clean and flowing water (PCEs 2 and 3), the reach has been able to cleanse itself and maintain a population of vermilion darters at several locations. One of the three known spawning sites for the species is located within this reach (PCE 4).

The headwaters of the unnamed tributary to Beaver Creek is

characterized by natural flows that are attributed to an abundance of spring groundwater discharges contributing adequate water quality, water quantity, and substrates (PCEs 1, 2, and 3). Increasing the connectivity of the vermilion darter populations (PCE 1) into the upper reaches of this tributary is an essential conservation requirement as it would expand the range and decrease the vulnerability of these populations to stochastic threats.

Threats to the vermilion darter and its habitat that may require special management and protection of PCEs are: urbanization activities (such as channel modification for flood control, and gravel extraction) that could result in increased bank erosion; significant changes in the existing flow regime due to future impoundment construction, water diversion, or water withdrawal; significant alteration of water quality; and significant changes in stream bed material composition and quality as a result of construction projects and maintenance activities, off-road vehicle use, gas and water easements, bridge construction, culvert installation, stormwater management, and other watershed and floodplain disturbances that release sediments or nutrients into the water.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuits Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request to reinitiate of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the vermilion darter or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency)) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded, authorized, or permitted, do not require section 7 consultation.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the vermilion darter.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities

involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the vermilion darter include, but are not limited to:

(1) Actions that would alter the geomorphology of the stream habitats. Such activities could include, but are not limited to, instream excavation or dredging, impoundment, channelization, and discharge of fill materials. These activities could cause aggradation or degradation of the channel bed elevation or significant bank erosion and could result in entrainment or burial of this species, as well as other direct or cumulative adverse effects to this species and its life cycle.

(2) Actions that would significantly alter the existing flow regime. Such activities could include, but are not limited to, impoundment, water diversion, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat necessary for growth and reproduction of the vermilion darter.

(3) Actions that would significantly alter water chemistry or water quality (for example, changes to temperature or pH, introduced contaminants, or excess nutrients). Such activities could include, but are not limited to, the release of chemicals, biological pollutants, or heated effluents into surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions that are beyond the tolerances of the species and result in direct or cumulative adverse effects on the species and its life cycle.

(4) Actions that would significantly alter stream bed material composition and quality by increasing sediment deposition or filamentous algal growth. Such activities could include, but are not limited to, construction projects; road and bridge maintenance activities; livestock grazing; timber harvest; off-road vehicle use; underground gas, water, and electric lines; and other watershed and floodplain disturbances that release sediments or nutrients into the water. These activities could eliminate or reduce habitats necessary for the growth and reproduction of the species by causing excessive sedimentation and burial of the species or their habitats, or nutrification leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause extreme decreases in nighttime dissolved oxygen levels through vegetation respiration, and cover the bottom substrates and the interstitial spaces between cobble and gravel.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at the *Federal eRulemaking Portal*: *http://www.regulations.gov*, or by contacting the Mississippi Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and we may exclude areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the vermilion darter are not owned or managed by the DOD, and we therefore anticipate no impact to national security. There are no areas proposed for exclusion based on impacts to national security.

Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in

addition to economic impacts and impacts on national security. We consider a number of factors including whether landowners have developed any conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposed rule, we have determined that there are currently no conservation plans or other management plans for the species, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or management plans from this proposed critical habitat designation. There are no areas proposed for exclusion from this proposed designation based on other relevant impacts.

Notwithstanding these decisions, as stated under the **Public Comments** section above, we are seeking specific comments on whether we should exclude any areas proposed for designation under section 4(b)(2) of the Act.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we are obtaining the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed actions are based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment, during the public comment period, on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this 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 by the date listed in the **DATES** section of this rule. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review — Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the specific information necessary to provide an adequate factual basis for determining the potential incremental regulatory effects of the designation of critical habitat for the vermilion darter to either develop the required RFA finding or provide the necessary certification statement that the designation will not have a significant impact on a substantial number of small business entities. On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for the vermilion darter. These sectors include industrial development and urbanization along with the accompanying infrastructure associated with such projects such as road, stormwater drainage, bridge and culvert construction and maintenance. We recognize that not all of these sectors may qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine (1) which of these sectors or activities are or involve small business entities and (2) what extent the effects are related to the vermilion darter being listed as an endangered species under the Act (baseline effects) or whether the effects are attributable to the designation of critical habitat (incremental). We believe that the potential incremental effects resulting from a designation will be small. As a consequence, following an initial evaluation of the information available to us, we do not believe that there will be a significant impact on a substantial number of small business entities resulting from this designation of critical habitat for the vermilion darter. However, we will be conducting a thorough analysis to determine if this may in fact be the case. As such, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact their business. Therefore, we defer our RFA finding on this proposal designation until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866.

As discussed above, this draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this

manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)-(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not jeopardize the continued existence of the species, or destroy or adversely modify critical habitat under section 7 of the Act. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would listing these species or designating critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments because the vermilion darter primarily occurs in privately owned stream channels. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with E. O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the vermilion darter in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the vermilion darter does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E. O. 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in Alabama. The critical habitat designation may have some benefit to this government in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of the vermilion darter.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E. O. 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'', we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of the vermilion darter. Therefore, we have not proposed designation of critical habitat for the vermilion darter on Tribal lands.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect this rule to significantly affect energy supplies, distribution, or use. Although two of the proposed units are below hydropower reservoirs, current and proposed operating regimes have been deemed adequate for the species, and therefore their operations will not be affected by the proposed designation of critical habitat. All other proposed units are remote from energy supply, distribution, or use activities. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary authors of this package are staff members of the Mississippi Fish and Wildlife Office.

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.In § 17.11(h), revise the entry for ''Darter, vermilion'' under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*		*	*	*
FISHES							
*	*	*	*		*	*	*
Darter, vermilion	*Etheostoma chermocki*	U.S.A. (AL)	Entire	E	715	17.95(e)	NA

* * * * *

3. In § 17.95(e), add an entry for ''Vermilion Darter (*Etheostoma chermocki*),'' in the same alphabetical order as the species appears in the table at §17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife

* * * * *

(e) Fishes

* * * * *

Vermilion Darter *(Etheostoma chermocki)*

(1) The critical habitat units are depicted for Jefferson County, Alabama, on the map below.

(2) The primary constituent elements (PCEs) of critical habitat for the vermilion darter are the habitat components that provide:

(i) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain bottom features (riffles, runs, and pools) and transition zones between bottom features, to continue appropriate habitat to maintain essential riffles, runs, and pools, to promote connectivity between spawning, foraging, and resting sites, and to maintain gene flow throughout the population.

(ii) Instream flow regime with an average daily discharge over 50 cubic feet per second inclusive of both surface runoff and groundwater sources (springs and seepages).

(iii) Water quality with temperature not exceeding 26.7 °C (80 °F), dissolved oxygen 6.0 milligrams or greater per liter, turbidity of an average monthly reading of 10 NTU and 15mg/l (Nephelometric Turbidity Units; units used to measure sediment discharge; Total Suspended Solids measured as mg/l of sediment in water) or less; and a specific conductance (ability of water to conduct an electric current, based on dissolved solids in the water) of no greater than 225 micro Siemens per centimeter at 26.7 °C (80 °F).

(iv) Bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, bridges, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Critical habitat unit map. The map was developed from USGS 7.5' quadrangles. Critical habitat unit upstream and downstream limits were then identified by longitude and latitude using decimal degrees.

(5) *Note*: Index map of critical habitat units for the vermilion darter follows:

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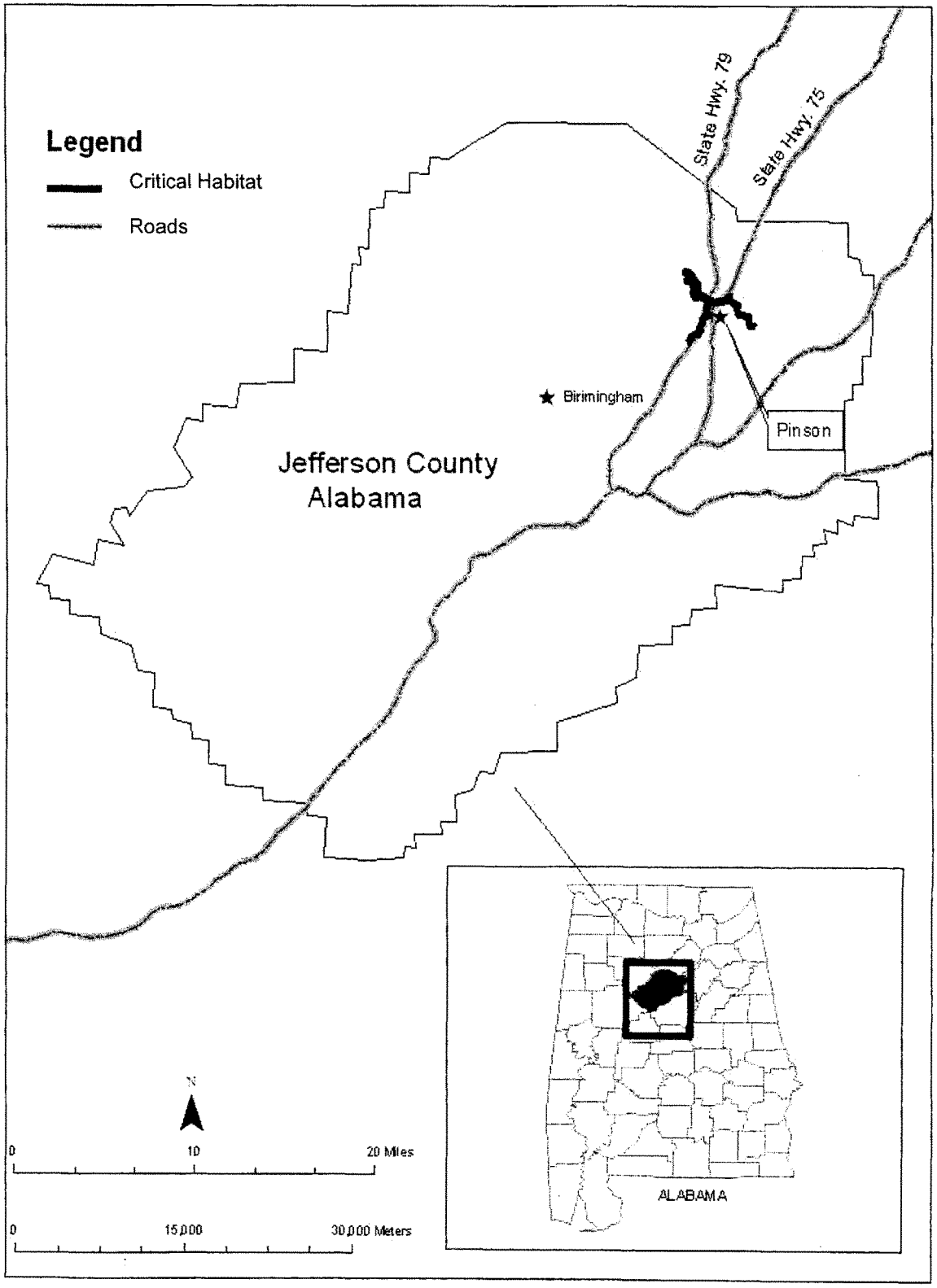
Index Map: Critical Habitat for the Vermilion Darter



(6) Unit 1: Turkey Creek, Jefferson County, Alabama.

(i) Unit 1 includes the channel in Turkey Creek from Shadow Lake Dam (086° 38' 22.50'' W long., 033° 40' 44.78'' N lat.) downstream to the Section 13/14 (T15S, R2W) line (086° 42' 31.81'' W long., 033° 43' 23.61'' N lat.).

(ii) Map of Unit 1 is provided at paragraph (10)(ii) of this entry.

(7) Unit 2: Dry Branch, Jefferson County, Alabama.

(i) Unit 2 includes the channel in Dry Branch from the bridge at Glenbrook Road (086° 41' 6.05'' W long., 033° 41' 10.65'' N lat) downstream to the confluence with Beaver Creek (86° 41' 17.39'' W long., 033° 41' 26.94'' N lat.).

(ii) Map of Unit 2 is provided at paragraph (10)(ii) of this entry.

(8) Unit 3: Beaver Creek, Jefferson County, Alabama.

(i) Unit 3 includes the channel of Beaver Creek from the confluence with the unnamed tributary to Beaver Creek (086° 41' 17.54'' W long., 033° 41' 26.94'' N lat.) downstream to its confluence with Turkey Creek (086° 41' 9.16'' W long., 033° 41' 55.86 N lat.).

(ii) Map of Unit 3 is provided at paragraph (10)(ii) of this entry.

(9) Unit 4: Dry Creek, Jefferson County, Alabama.

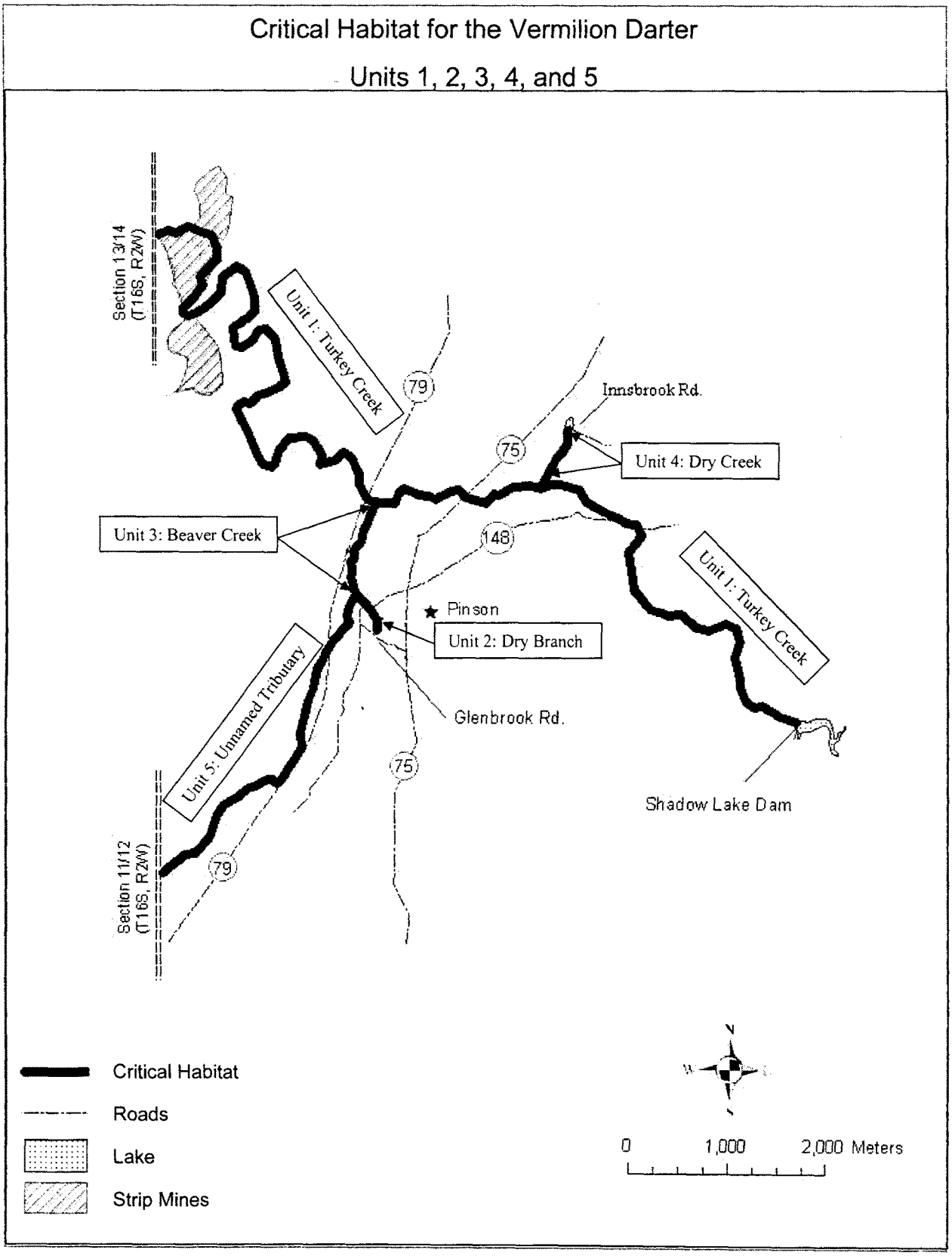
(i) Unit 4 includes the channel of Dry Creek, from Innsbrook Road (086° 39' 53.78'' W long., 033° 42' 19.11'' N lat) downstream to the confluence with Turkey Creek (086° 40' 3.72'' W long., 033° 42' 1.39'' N lat).

(ii) Map of Unit 4 is provided at paragraph (10)(ii) of this entry.

(10) Unit 5: Unnamed Tributary to Beaver Creek, Jefferson County, Alabama.

(i) Unit 5 includes the channel of the Unnamed Tributary from its confluence with Beaver Creek (086° 41' 17.54'' W long., 033° 41' 26.94'' N lat.), upstream to the 12/11 (T16S, R2W) section line (086° 42' 31.70'' W long., 033° 39' 54.15'' N lat.)

(ii) Map of Units 1, 2, 3, 4, and 5 (Map 2) follows:


Critical Habitat for the Vermilion Darter
Units 1, 2, 3, 4, and 5
Section 13/14 (T16S, R2W)
Unit 1: Turkey Creek
79
Innsbrook Rd.
75
Unit 4: Dry Creek
Unit 3: Beaver Creek
148
Unit 1: Turkey Creek
Pinson
Unit 2: Dry Branch
Unit 5: Unnamed Tributary
Glenbrook Rd.
75
Shadow Lake Dam
Section 11/12 (T16S, R2W)
79
Critical Habitat
Roads
Lake
Strip Mines
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2,000 Meters

* * * * *

Dated: November 16, 2009.

Tom Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–28855 Filed 12–2–09; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register

Vol. 74, No. 231

Thursday, December 3, 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 COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal Zone Management Act External Evaluation.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 78.

Average Hours per Response: Two hours.

Burden Hours: 156.

Needs and Uses: This information collection is an external evaluation of how the National Oceanic and Atmospheric Administration's (NOAA's) Office of Ocean and Coastal Resource Management (OCRM) is operating and managing coastal management and estuarine research reserve programs under the Coastal Zone Management Act (CZMA), particularly in terms of how the OCRM plans, measures, reviews and directs funding for these programs to achieve the objectives of the CZMA. The contractor shall examine the extent to which planning and performance-based management processes have changed in the past five to six years and make recommendations to the appropriate officials of NOAA, the National Ocean Service (NOS), and the OCRM about how the programs can further improve their planning, budgeting, and performance measurement processes to weigh priorities and assign resources based on the clearest needs. The contractor shall also make recommendations, if appropriate, for improving the programs' evaluation and funding guidance and mechanisms to enhance its capacity for demonstrate program outcomes and results, as well as improving linkages between the component programs.

Affected Public: State, local and tribal governments; not-for-profit institutions.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: November 30, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–28857 Filed 12–2–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; State Broadband Data and Development Grant Program

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 1, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 7845, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via e-mail to *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Anne Neville, National Broadband Mapping Program Director, National Telecommunications and Information Administration (NTIA), Room 4898, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington DC 20230 (or via e-mail to *aneville@ntia.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the State Broadband Data and Development (SBDD) Grant Program is to implement the joint goals of the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act by assisting, through grants, states or their designees in gathering and verifying state-specific data on the availability, speed, location, technology and infrastructure of broadband services. The data will be used to develop publicly available state-wide broadband maps and to help populate the comprehensive and searchable national broadband map that NTIA is required under the Recovery Act to create and make publicly available by February 17, 2011.

Despite the importance of broadband to the U.S. economy, information about broadband availability is currently lacking. The data collected will provide critical information for grant-making, regulatory and policy-making efforts, improve the quality of State-level broadband information, and help ensure map accuracy. The national broadband map will improve market efficiency by providing important information to consumers about broadband consumption options and will enable investors to make better strategic choices about network expansion. The national broadband map will also directly aid in the development of a faster, more extensive broadband infrastructure to reach a greater number of Americans, particularly in unserved and underserved areas.

On July 8, 2009, NTIA issued the Notice of Funds Availability (NOFA) and Solicitation of Applications setting forth the requirements for the SBDD Grant Program (*See* 74 FR 32545, July 8,

2009). On August 12, 2009, NTIA issued a clarification of the information collection requirements in the NOFA (*See* 74 FR 40569, Aug. 12, 2009). On September 10, 2009, NTIA issued an additional clarification announcing that NTIA will initially fund mapping and data collection efforts for two years to enable the agency to assess lessons learned, determine best practices, and investigate opportunities for improved data collection prior to obligating funding for subsequent years (*See* 74 FR 46573, Sept. 10, 2009). Applications for the grant program were received until August 14, 2009 and NTIA received applications representing all 50 States, 5 territories, and the District of Columbia.

Each applicant for program funding submitted an application, on standard OMB-approved forms, proposing data collection through five years and providing five-year budgets. Applicants provided comprehensive descriptions of their plans to obtain and verify required data from all commercial or public providers in their respective states. Data collection and verification methods may vary between applicants and may include online and on-the-ground surveys of providers and the public, Web-enabled data searches, statistical modeling, drive testing of spectrum use and crowd-sourced data reporting. Data must be collected at least semiannually and initial data collection is due on February 1, 2010. On October 5, 2009, NTIA announced that it awarded the first four grants under the SBDD program to fund data collection in California, Indiana, North Carolina, and Vermont.

II. Method of Collection

All reports from awardees will be submitted via the Internet (to allow for efficient posting on the NTIA Web site and public accessibility).

III. Data

OMB Control Number: 0660–0032.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Respondents include state, territory and the District of Columbia or their designees. Subrespondents include facilities-based providers of broadband connections, incumbent and competitive local exchange carriers (LECs), facilities-based mobile telephony service providers, and wireless Internet service providers (WISPs).

Estimated Number of Total Respondents: 56 respondents and 2,000 subrespondents.

Estimated Time Per Response: 3,120 hours for respondents and 50 hours for subrespondents.

Estimated Total Annual Burden Hours: 549,440.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection. Comments will also become a matter of public record.

Dated: November 30, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–28886 Filed 12–2–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

Hunter College/CUNY et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

Docket Number: 09–055. *Applicant:* Hunter College/CUNY, New York, NY 10065. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 74 FR 54959, October 26, 2009.

Docket Number: 09–056. *Applicant:* University of California at Davis, Davis, CA 95616. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 74 FR 54959, October 26, 2009.

Docket Number: 09–057. *Applicant:* Northwestern University, Evanston, IL 60208. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 74 FR 54959, October 26, 2009.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: November 25, 2009.

Christopher Cassel,

Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–28880 Filed 12–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Pasta From Italy: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Victoria Cho at (202) 482–5075, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

Background

On August 26, 2008, the U.S. Department of Commerce (Department) published a notice of initiation of the administrative review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2007, to June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 73 FR 50308 (August 26, 2008). On August 6, 2009, the Department published the preliminary results of this review. *See Certain Pasta from Italy: Notice of Preliminary Results of Twelfth Antidumping Duty Administrative Review,* 74 FR 39285 (August 6, 2009).

The final results of this review are currently due no later than December 4, 2009.

Extension of Time Limit of the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (Act), requires the Department to issue the final results of a review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department is considering modifying the model-match methodology, which is a complex issue that requires additional time to adequately analyze. Therefore, the Department is fully extending the final results. The final results are now due not later than February 2, 2010.

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: November 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28272 Filed 12–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Second Administrative Review of the Antidumping Duty Order

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

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on certain lined paper products (''CLPP'') from the People's Republic of China (''PRC'') on July 24, 2009. The period of review (''POR'') is September 1, 2007, through August 31, 2008.

DATE: *Effective Date:* December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2009, the Department published its preliminary results of the second administrative review. *See Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 36662 (July 24, 2009) (''Preliminary Results''). On August 25, 2009, Watanabe Paper Products (Shanghai) Co., Ltd., Watanabe Paper Products (Linging) Co., Ltd., and Hotrock Stationery (Sennzhen) Co., Ltd., (collectively, ''Watanabe'') filed its case brief (''Watanabe Case Brief''). On August 31, 2009, the Association of American School Paper Suppliers (''petitioner'') filed a rebuttal brief (''Petitioner Rebuttal Brief''). On August 24, 2009, Watanabe requested a hearing regarding the second administrative review of CLPP from the PRC. The Department conducted the hearing on September 16, 2009. We have conducted this administrative review in accordance with sections 751 and 777(i)(1) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213 and 351.221, as appropriate.

Period of Review

The POR is September 1, 2007, through August 31, 2008.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;

• Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;

• Lined continuous computer paper;

• Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines;

• Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

• Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

• FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope). Merchandise subject to this order is typically imported under headings 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, 4810.22.5044, 4811.90.9090, 4820.10.2010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this review are addressed in the memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Carole A. Showers, Acting Deputy Assistant Secretary for Policy and Negotiations, Issues and Decisions for the Final Results of the Second Administrative Review of the Antidumping Duty Order on Certain Lined Paper Products from the People's Republic of China, dated November 21, 2009 (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document which is on file in the Central Records Unit, Room 1117, of the main Department building, and is accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made no changes to the *Preliminary Results*. For the final results, we have adopted our positions in the *Preliminary Results*. We continue to find that the application of total adverse facts available is warranted for Watanabe pursuant to sections 776(a)(2)(A), (C), and (D) and 776(b) of the Act. For a complete discussion, see the Issues and Decision Memorandum.

Application of Adverse Facts Available

Section 776(a) of the Act provides that, the Department shall apply ''facts otherwise available'' if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so

inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India,* 70 FR 54023, 54025–26 (September 13, 2005); *Statement of Administrative Action,* reprinted in H.R. Doc. No. 103–216, at 870 (1994) (''*SAA*''). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp.* v. *United States,* 337 F.3d 1373, 1382 (Fed. Cir. 2003) (''*Nippon*''').

Watanabe

As discussed in the *Preliminary Results,* the Department determined that facts available with an adverse inference was warranted for Watanabe. Watanabe submitted an incomplete response to the Department's original questionnaire, claiming that because it did not sell subject merchandise to the United States during the POR, it would not respond additionally to Sections A, C and D of the Department's questionnaire, even though entries of its merchandise were made during the POR. Moreover, the Department extended the deadline for submission in response to Watanabe's request; however, Watanabe stated that it did not intend to submit additional responses. Because Watanabe withheld information, significantly impeded the proceeding and provided information that could not be verified, we find that application of facts available is appropriate under sections 776(a)(2)(A), (B), and (C) of the Act. We further find that application of adverse facts available (''AFA'') is appropriate under section 776(b) because Watanabe failed to cooperate to the best of its ability in responding to the Department's requests for information.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, there is a rebuttable presumption that all companies within that country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter demonstrates that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both de jure and de facto governmental control over export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 *(May 6, 1991), as further developed in Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). It is the Department's practice to require a party to submit evidence that it operates independently of the State-controlled entity in each segment of a proceeding in which it requests separate rate status. The process requires exporters to submit a separate-rate status application. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review,* 72 FR 56724 (October 4, 2007), *Peer Bearing Co. Changshan* v. *United States, 587 F.Supp. 2d 1319, 1324–25 (CIT 2008) (affirming the Department's determination in that review).* As discussed in the *Preliminary Results,* Watanabe did not respond to the Department's questionnaire regarding separate rate eligibility, or submit a separate rate certification. Watanabe has not demonstrated that it operates free from government control. Therefore, the Department continues to find that Watanabe is part of the PRC-wide entity.

The PRC-Wide Entity

In the *Preliminary Results,* the Department determined that there were exports of merchandise under review from Watanabe, a PRC producer/exporter that did not respond to the Department's questionnaire and consequently did not demonstrate its eligibility for separate-rate status. *See* 74 FR at 36665. As a result, the Department is treating Watanabe as part of the PRC-wide entity.

Additionally, because we determined that Watanabe is part of the PRC-wide entity, the PRC-wide entity is under review. Pursuant to section 776(a) of the Act, we further find that because the PRC entity (including Watanabe) failed to respond to the Department's questionnaires, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, submitted information that cannot be verified, or otherwise impeded the proceeding, it is appropriate to apply a dumping margin for the PRC-wide entity using the facts otherwise available on the record. Moreover, by failing to respond to the Department's requests for information, we find that the PRC-wide entity has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information in this proceeding, within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted in selecting from the facts otherwise available. *See Nippon,* 337 F.3d at 1382–83.

Selection of Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 4913 (January 28, 2009)).

Generally, the Department finds that selecting the highest rate from any segment of the proceeding as AFA is

appropriate. *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 70 FR 76755, 76761 (December 28, 2005). The CIT and the Court of Appeals for the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions. *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding the application of an AFA rate which was the highest available dumping margin from a different respondent in an investigation).

As AFA, we have assigned to the PRC-wide entity a rate of 258.21 percent, from the investigation of CLPP from the PRC, which is the highest rate on the record of all segments of this proceeding. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006). As explained below, this rate has been corroborated.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. *See SAA* at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 57391, 57392 (November 6, 1996) (unchanged in the final determination), *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 62 FR 11825 (March 13, 1997).

The AFA rate selected here is from the investigation. This rate was calculated based on information contained in the petition, which was corroborated for the final determination. No additional information has been presented in the current review which calls into question the reliability of the information. *See Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review,* 74 FR 17160 (April 14, 2009). Therefore, the Department finds that the information continues to be reliable. In addition, the AFA rate we are applying is the rate currently in effect for the PRC-wide entity.

Final Results of Review

We determine that the following margin exists for the period September 1, 2007, through August 31, 2008:

Producer/manufacturer	Weighted-average margin (percent)
PRC-wide Entity (which includes Watanabe)	258.21

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We will instruct CBP to liquidate Watanabe's appropriate entries at the PRC-wide rate of 258.21 percent.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of CLPP from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) For previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (2) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 258.21 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

This notice also serves as a reminder to parties subject to administrative protective 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.

We are issuing and publishing these final results and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: November 23, 2009.

Carole A. Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

List of Comments

Comment 1: Whether Subject Merchandise Produced by Watanabe is Subject to the 2007–2008 Review

Comment 2: Whether the Department Correctly Applied Adverse Facts Available to Watanabe

Comment 3: Whether the Use of the PRC–Wide Rate is Proper

[FR Doc. E9–28769 Filed 12–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–957]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

EFFECTIVE DATE: December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler or Matthew Jordan, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1293 and (202) 482–1540, respectively.

Background

On October 6, 2009, the Department of Commerce (''the Department'') initiated an investigation of certain seamless carbon and alloy steel standard, line, and pressure pipe from the People's Republic of China (''PRC''). *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 52945 (October 15, 2009). Currently, the preliminary determination is due no later than December 10, 2009.

Postponement of Due Date for Preliminary Determination

Under section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the ''Act''), the Department may extend the period for reaching a preliminary determination in a countervailing duty investigation until no later than the 130th day after the date on which the administering authority initiates an investigation, if the Department determines that the parties are cooperating and the case is extraordinarily complicated. The Department finds that the instant case is extraordinarily complicated by reason of the number and complexity of the alleged countervailable subsidy practices, and the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters. As such, the Department is extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated (*i.e.*, February 13, 2010). However, February 13, 2010, falls on a Saturday, and the following Monday, February 15, 2010, is a federal holiday. It is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary determination is no later than February 16, 2010.

As the Department is aware, Section 703(c)(2) of the Act and 19 CFR 351.205(f) state that if the Department postpones the preliminary determination, it will notify all parties to the proceeding no later than 20 days prior to the scheduled date of the preliminary determination. The Department acknowledges that it inadvertently missed this deadline. We issued questionnaires to the respondents in this case on November 9, 2009. The due date for these questionnaires is December 16, 2009, which is after the unextended preliminary determination date. While the Department intended to extend the preliminary determination due date when we issued the questionnaire, due to an administrative oversight we did not complete the extension notice at that time.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f).

Dated: November 25, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–28881 Filed 12–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–824]

Certain Coated Paper from Indonesia: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Justin Neuman, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371 and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2009, the Department of Commerce (the Department) initiated the countervailing duty investigation of certain coated paper from Indonesia. *See Certain Coated Paper from Indonesia: Initiation of Countervailing Duty Investigation*, 74 FR 53707 (October 20, 2009). Currently, the preliminary determination is due no later than December 17, 2009.

Postponement of Due Date for the 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, among other reasons, the petitioner makes a timely request for an extension pursuant to section 703(c)(1)(A) of the Act. In the instant investigation, the petitioners, Appleton Coated LLC, NewPage Corporation, S.D. Warren Company d/b/a Sappi Fine Paper North America, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, made a timely request on November 19, 2009, requesting a postponement of the preliminary countervailing duty determination to 130 days from the initiation date. *See* 19 CFR 351.205(e) and the petitioners' November 19, 2009, letter requesting postponement of the preliminary determination.

Therefore, pursuant to the discretion afforded the Department under 703(c)(1)(A) of the Act and because the Department does not find any compelling reason to deny the request, we are extending the due date for the preliminary determination to no later than 130 days after the date on which this investigation was initiated (*i.e.*, to February 20, 2010). However, February 20, 2010 falls on a Saturday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for the completion of the preliminary determination is now February 22, 2010, the first business day after the 130th day from initiation.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: November 25, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–28882 Filed 12–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities—Regional Resource Center; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Note: This notice inviting applications is open to qualified applicants to serve the Region 3 area only.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326R.

Note: On July 10, 2009, we published a Notice Inviting Applications for New Awards for FY 2009 in the **Federal Register** (74 FR 33226) inviting applications for CFDA Number 84.326R using the Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Regional Resource Centers priority. We invited applications in that notice to support the operation of six Regional Resource Centers (RRCs) located in geographic regions established by the Secretary. Two applications were submitted to serve Region 3 and neither was recommended for funding. Through this notice, we invite applications for another competition for a Regional Resource Center to serve Region 3.

Dates:

Applications Available: December 3, 2009.

Deadline for Transmittal of Applications: February 1, 2010.

Deadline for Intergovernmental Review: April 2, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance and Dissemination To Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (*see* sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400, *et seq.*).

Absolute Priority: For FY 2010 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Regional Resource Center.

Background:

Over the last four decades, the Office of Special Education Programs (OSEP) has supported Regional Resource Centers to provide TA that is targeted to meet State-specific needs related to meeting the program requirements under Parts B and C of IDEA.

Historically, each RRC functioned independently, serving primarily as a TA provider to State educational agencies (SEAs) in the RRC's region helping the SEAs address self-identified needs related to providing services to children with disabilities. In 1998, RRCs' traditional role as TA providers expanded when they also began serving as brokers of TA, linking SEAs and local educational agencies (LEAs) to relevant OSEP-funded TA centers. Over time, and as OSEP developed its monitoring of Part C programs and issued monitoring reports from 1998 through 2003, RRCs began providing TA in their respective regions to the State Part C lead agencies (LAs).

When IDEA was last reauthorized in 2004, the increased general supervision responsibilities of SEAs and LAs under Parts B and C, respectively, also increased the need for general supervision support and collaboration among RRCs and other OSEP-funded TA Centers (*i.e.,* the National Dropout Prevention Center for Students with Disabilities and the Data Accountability Center) to provide coordinated and meaningfully informed TA. Specifically, sections 616(b) and 642 of IDEA require each State to have in place a State Performance Plan (SPP) that evaluates the State's efforts to implement requirements under Parts B and C of IDEA and that describes how the State will improve its implementation of these requirements. The SPP must include measurable and rigorous targets for quantifiable indicators in the priority areas described in section 616(a)(3) of IDEA. These priority areas for Part B are—providing a free appropriate public education (FAPE) in the least restrictive environment (LRE); reducing disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification; and ensuring effective general supervision, including child find, transition, and dispute resolution. These priority areas for Part C are—providing early intervention services in natural environments and ensuring effective general supervision, including child find, transition, and dispute resolution.

Additionally, sections 616 and 642 of IDEA require each SEA and LA to conduct many activities annually. Each SEA and LA must submit an Annual Performance Report (APR) to the Secretary on the State's progress in meeting its targets in each of the priority areas under Parts B and C of IDEA. There are 20 priority indicators under Part B (including early childhood transition, postsecondary transition, graduation, and dropout prevention) and 14 priority indicators under Part C (including provision of early intervention services in the natural environment, timely provision of services, timely evaluation, and early childhood transition). OSEP issues annual letters of determination and response tables for each State under Parts B and C of IDEA based in large part on the State's APR data in each of these priority indicator areas.

In turn, SEAs must monitor and evaluate LEAs' implementation of Part B, and State LAs must monitor and

evaluate the implementation of Part C by early intervention service (EIS) programs. Each year, the SEA and LA must publicly report on the performance of each LEA or EIS program in each of the priority areas and issue a local ''determination.'' Through such reporting, SEAs and LAs are responsible for ensuring both the continuous improvement of results and functional outcomes for children with disabilities and the timely correction of noncompliance with IDEA requirements.

The Department first issued its annual determinations under sections 616 and 642 of IDEA in 2007 and made one of the following determinations for each State: (1) The State meets IDEA requirements, (2) the State needs assistance, or (3) the State needs intervention. Under section 616(e)(1) of IDEA, when conducting its second annual determinations in 2008, the Department was required to take enforcement actions for those States determined to be in ''needs assistance'' for two consecutive years. One of those enforcement options was advising a State of the availability of TA, including the resources of the RRCs and the need to utilize such TA. In 2008, the Department advised 25 Part B SEAs and 17 Part C LAs determined to be in ''needs assistance'' for two consecutive years of the requirement to access TA under section 616(e)(1)(A) of IDEA. In 2009, the Department took specific enforcement actions for those States determined to be in ''needs intervention'' for three consecutive years, which may include the development of an improvement plan or corrective action plan. These enforcement options will require continued and additional TA support of SEAs and State LAs.

In addition, the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, identifies four education reform areas that the Secretary considers to be central to improving the results for all students, including students with disabilities. These reform areas include: (1) Implementing rigorous college- and career-ready standards and assessments; (2) improving the collection and use of data; (3) improving teacher effectiveness; and (4) supporting the struggling schools. These four ARRA reform areas directly align with the SPP priority indicators and the SPP targets. The following Web site provides more information on ARRA: *http://www.ed.gov/policy/gen/leg/recovery/factsheet/stabilization-fund.html.*

To ensure that RRCs are available to meet these increased TA needs, OSEP has determined that new funding is needed to support consistent and collaborative work between the six regional RRCs while addressing the increased SEA and LA general supervision responsibilities under Parts B and C of IDEA.

Priority:

The purpose of this priority is to fund one cooperative agreement to support the operation of an RRC in Region 3 that will collaborate with the five other RRCs to provide coordinated and research-based TA to SEAs and LAs to help them: (1) Meet Federal accountability requirements under IDEA; (2) implement systems of general supervision that improve results and functional outcomes for children with disabilities; (3) work with OSEP-funded TA centers, as appropriate, to develop, identify, and implement evidence-based tools and practices to increase the likelihood that SEAs and LAs will meet their SPP targets in the priority areas described in section 616(a)(3), such as providing FAPE in the LRE, early childhood transition, secondary transition, postsecondary outcomes, graduation, and dropout prevention; and (4) develop and implement strategies that address the four education reform areas and other critical goals that align with the indicators established under IDEA.

The Secretary establishes the following geographic regions for the RRCs:

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

Region 2: Delaware, the District of Columbia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

Region 3: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Texas, Puerto Rico, and the Virgin Islands.

Region 4: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Region 5: Arizona, Colorado, Kansas, Montana, New Mexico, Nebraska, North Dakota, South Dakota, Utah, Wyoming, and the Bureau of Indian Affairs.

Region 6: Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model for the RRC that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed RRC. A logic model communicates how the RRC will achieve its outcomes and provides a framework for both the formative and summative evaluations of the RRC;

Note: The following Web site provides more information on logic models and lists multiple online resources: *http://www.cdc.gov/eval/resources.htm.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party;

(e) A budget for attendance at the following:

(1) A one day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual two-day planning meeting held in Washington, DC, with the OSEP Project Officer and the other five OSEP-funded RRCs during each subsequent year of the project period. The initial kick-off meeting must allow time for the RRC to be briefed on the action plan that was collectively started in October 2009 by the other five RRCs to address how the six RRCs will share resources when appropriate (*see, e.g.,* paragraph (f) below). The Region 3 RRC will provide input to this action plan during meetings designated by the Project Officer and held with the other five OSEP-funded RRCs. The action plans for years two and three must be developed collaboratively with the other five OSEP-funded RRCs at the close of years one and two respectively.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) A four-day Technical Assistance and Dissemination Conference in Washington, DC, during each year of the project period.

(4) Four two-day trips annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(f) A line item in the proposed budget that will support the cost, shared among all of the RRCs when established, for hiring, at a minimum, one full-time coordinator (1 FTE) who will manage the collaborative work of the RRCs; and

Note: Over the last two decades the RRCs received direct support (*e.g.,* workgroup facilitation and technology development support, etc.) from the OSEP-funded Federal Resource Center (FRC). In 2008 the FRC was recompeted as the Technical Assistance Coordination Center (TACC). TACC is a coordination hub where the OSEP-funded centers and other Federal agencies find resources, collaborate, and problem-solve in order to conduct their work without duplicating efforts. RRCs will receive the same level of support from TACC as all the other centers; however, the direct support once provided by the FRC (i.e., the coordination of activities with the small States consortium, coordination of cross-RRC workgroups, the planning and facilitation of monthly RRC meetings) will no longer be available to the RRCs.

(g) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed RRCs' shared project activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the RRC must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the RRC must, at a minimum, conduct the following activities:

Knowledge Development Activities.

The RRC, in collaboration with the other five RRCs, must—

(a) During the first year of the project conduct a systematic review of the former RRCs and other OSEP-funded TA Centers, as appropriate, that—

(1) Analyzes existing data (e.g., data on previously developed scopes of work, tools, products, and staffing) collected on the nature of the TA provided and its evidence-based; and

(2) By the end of year one, produces a summary report regarding the most effective types of TA and the best practices for implementing effective TA in SEAs and LAs; and

(b) Conduct an annual review of—

(1) Part B and Part C SPPs and APRs to evaluate States' progress in meeting their targets in each of the priority areas under IDEA; and

(2) OSEP letters of determination and response tables, including letters of determination and response tables of States determined to be in ''needs assistance'' for two consecutive years and States determined to be in ''needs intervention'' for three consecutive years, in order to develop an action plan for supporting SEAs and LAs in their development of improvement and corrective action plans.

Technical Assistance and Dissemination Activities.

The RRC must—

(a) Collaborate and communicate on an ongoing basis with the other five RRCs, the other OSEP-funded TA&D Centers, and the other centers funded by the Department's Office of Elementary and Secondary Education (*e.g.,* The Regional Comprehensive Centers and the Equity Assistance Centers) to provide coordinated and research-based TA to SEAs and LAs;

(b) In collaboration with the other RRCs and OSEP-funded TA Centers, as appropriate—

(1) Develop action plans and activities based on OSEP-identified priorities, *i.e.,* all indicators found in the Part B and C SPPs. Action plans and activities may include items mentioned in activities (a), (b), and (c) under this section but are not limited to these activities;

(2) Develop TA tools and products related to SPP and APR requirements and evaluate the effectiveness of the implementation of these tools and products through annual assessments;

(3) Provide coordinated and research-based TA to SEAs and LAs to help them establish and implement strategies that address the four goals outlined in the ARRA and that are aligned with the indicators established under IDEA and other critical priorities related to improving outcomes for children with disabilities such as developing seamless, high-quality early childhood programs; scaling up successful models and strategies; and helping more students enter and complete college and get jobs; and

(4) Assist SEAs and LAs in refining and improving State policies, procedures, or both related to the Federal accountability requirements under IDEA; and

(c) Provide coordinated and research-based TA to SEAs and LAs to support them in meeting current IDEA requirements and OSEP initiatives for—

(1) Meeting APR reporting requirements (*e.g.,* data collection and analysis, and development, implementation, and evaluation of evidence-based improvement activities);

(2) Identifying improvement activities and, through annual assessments, determining if the newly identified activities are effective;

(3) Developing and implementing corrective action plans for LEAs and local providers, including implementation of enforcement actions for States in ''needs intervention'' for three consecutive years; and

(4) Improving general supervision at the SEA and LA level, including improving skills in fiscal management, policy development, practices and procedures, monitoring systems, and the timely correction of noncompliance with IDEA requirements.

Leadership and Coordination Activities.

The RRC, in collaboration with the other five RRCs, must do the following:

(a) Establish and maintain an advisory committee to review the activities and outcomes of the RRCs' collaborative work and provide programmatic support and advice throughout the project period. The committee must include, but is not limited to, SEA special education directors, Part C coordinators, directors of OESE-funded Regional Comprehensive Centers, and directors of OSEP-funded TA centers. The RRC must submit names of proposed members of the advisory committee to OSEP for approval within four weeks after receipt of the award. These names will be considered along with the names submitted earlier by the other five RRCs. At a minimum, the advisory committee must meet on an annual basis either in Washington, DC, or by electronic means.

(b) Collaborate, on an ongoing basis, with OSEP-funded TA projects, especially those working on SPP indicators and general supervision. This collaboration must include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events that are addressed in annual work plans.

(c) Participate in, organize, or facilitate, as directed by OSEP, communities of practice (*http://www.tadnet.org/communities*) that are aligned with the RRCs' objectives as a way to support discussions and collaboration among key stakeholders.

(d) Submit, prior to developing any new product, whether paper or electronic, through the Proposed Product Review (PPR) system, to the OSEP Project Officer for approval, a proposal describing the content and purpose of the product.

(e) Maintain and upgrade the existing RRCs' Web site portal. (This portal can be found at *www.rrfcnetwork.org*). This Web site must continue to meet government or industry-recognized standards for accessibility and must link to *http://www.tadnet.org.*

(f) Contribute, on an ongoing basis, updated information on the RRCs' services to OSEP's mega database (*http://matrix.tadnet.org*). The mega database provides current information on Department-funded TA services to a range of stakeholders.

(g) Coordinate with the National Dissemination Center for Individuals with Disabilities to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The RRC must report to the OSEP Project Officer the outcomes of these coordination efforts.

(h) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations, e-mail communication, and monthly reports.

Fourth and Fifth Years of the RRC:

In deciding whether to continue funding the RRC for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the RRC; and

(c) The quality, relevance, and usefulness of the RRC's activities and products and the degree to which its activities and products have contributed to changed practice and improved State Parts B and C general supervision systems, SPPs, and APRs.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $48,048,664 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program for FY 2010, of which we intend to use an estimated $1,300,000 for this Regional Resource Center competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Awards: We will reject any application that proposes a budget exceeding $1,300,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.326R.

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 person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to the application narrative in Part III.

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 3, 2009.

Deadline for Transmittal of Applications: February 1, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application

electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 2, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326R), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.326R), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice.

Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Rex Shipp, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4178, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7523.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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

Dated: November 30, 2009.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E9–28873 Filed 12–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Indian Education—Demonstration Grants for Indian Children; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

Dates:

Applications Available: December 3, 2009. Deadline for Transmittal of Applications: February 18, 2010.

Deadline for Intergovernmental Review: April 19, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects that develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian students.

Priorities: This competition contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priorities are from the regulations for this program (34 CFR 263.21(c)(1) and (3)). In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priorities are from sections 7121(d)(1)(B) and 7143 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7441(d)(1)(B) and 7473).

Absolute Priorities: For FY 2010 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of the following priorities.

These priorities are:

Absolute Priority One

School readiness projects that provide age-appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten school level.

Absolute Priority Two

College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including mathematics and science, to enable Indian students to successfully transition to postsecondary education.

Competitive Preference Priorities: For FY 2010, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one or both of these priorities.

These priorities are:

Competitive Preference Priority One

We award five competitive preference priority points to an applicant that presents a plan for combining two or more of the activities described in section 7121(c) of the ESEA over a period of more than one year.

Note: For *Competitive Preference Priority One,* the combination of activities is limited to the activities described in the *Absolute Priorities* section of this notice.

Competitive Preference Priority Two

We award five competitive preference priority points to an application submitted by an eligible Indian tribe, Indian organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five competitive preference points. These competitive preference points are in addition to the five competitive preference points that may be given under *Competitive Preference Priority One.*

Note: A consortium agreement, signed by all parties, must be submitted with the application in order for the application to be considered a consortium application. Letters of support do not meet the requirement for a consortium agreement. We will reject any application from a consortium that does not meet this requirement.

Program Authority: 20 U.S.C. 7441.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 263.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $2,000,000 for new awards for this program for FY 2010. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $250,000.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are State educational agencies (SEAs); local educational agencies (LEAs), including charter schools that are considered LEAs under State law; Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students; Indian institutions (including Indian institutions of higher education); or a consortium of any of these entities.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must include a signed consortium agreement with the application. Letters of support do not meet the requirement for a consortium agreement.

Applicants applying in consortium with or as an ''Indian organization'' must demonstrate eligibility by showing how the ''Indian organization'' meets all of the criteria outlined in 34 CFR 263.20.

The term ''Indian institution of higher education'' means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College),

authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* Projects funded under this competition are encouraged to budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 299A.

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 person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 35 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the budget narrative justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section which may include a table of contents.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: December 3, 2009.

Deadline for Transmittal of Applications: February 18, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 2, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Demonstration Grants for Indian Children competition, CFDA number 84.299A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., room E231, Washington, DC 20202. FAX: (202) 260–7779.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.299A, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA 84.299A, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number,

including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) The percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of language and communication development as evidenced by a pre- and post-test each project year; (2) the percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of cognitive skills and conceptual knowledge as evidenced by a pre- and post-test each project year; (3) the percentage of 3- and 4-year-old American Indian and Alaska Native children achieving gains of a predetermined magnitude, at a minimum, on an approved assessment of social development as evidenced by a pre- and post-test each project year; (4) the percentage of American Indian and Alaska Native high school students successfully completing (as defined by a passing grade of C or better) at least 3 years of challenging core courses (English, mathematics, science, and social studies) by the end of their fourth year in high school; and (5) the percentage of American Indian and Alaska Native students who graduate with their incoming 9th grade cohort (not counting those who transfer to another school).

We encourage applicants to demonstrate a strong capacity to provide reliable data on these measures in their responses to the selection criteria ''Quality of project services'' and ''Quality of the project evaluation.'' All grantees will be expected to submit, as part of their performance report, information with respect to these performance measures.

VII. Agency Contact

For Further Information Contact: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E231, Washington, DC 20202–6335. Telephone: (202) 205–2528 or by e-mail: *Lana.Shaughnessy@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

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

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

Dated: November 30, 2009.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–28874 Filed 12–2–09; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 27, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on February 1, 2010. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to *PRA@fcc.gov* or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0286.

Title: Section 80.302, Notice of Discontinuance, Reduction, or Impairment of Service Involving a Distress Watch.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 160 respondents; 160 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 160 hours.

Privacy Act Impact Assessment: N/A. Statutory authority for this information collection is in 47 U.S.C. sections 151–155, 301–309, 3 UST 3450, 3 UST 4726, 12 UST 2377.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Need and Uses: The Commission is submitting this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. There is no change in the third party disclosure requirement. And, there is no change in the Commission's burden estimates.

Section 80.302 requires that when changes occur in the operation of a public coast station which includes discontinuance, relocation, reduction or suspension of a watch required to be maintained on 2182 kHz or 156.800 MHz band, notification must be made by the licensee to the nearest district office of the U.S. Coast Guard as soon as practicable. The notification must include the estimated or known resumption time of the watch.

This notification allows the U.S. Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. Once the U.S. Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate the U.S. Coast Guard may file a petition to deny any application.

Federal Communications Commission.

William F. Caton,

Deputy Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–28851 Filed 12–2–09; 8:45 am]

BILLING CODE 6712–01–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 December 28, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. S&T Bancorp, Inc., Indiana, Pennsylvania; to acquire 24.99 percent of the voting shares of Allegheny Valley Bancorp, Inc., and thereby indirectly acquire voting shares of Allegheny Valley Bank of Pittsburgh, both of Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. WestBridge Bancshares, Inc., Chesterfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of WestBridge Bank & Trust Company, Chesterfield, Missouri.

Board of Governors of the Federal Reserve System, November 30, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–28866 Filed 12–2–09; 8:45 am]

BILLING CODE 6210–01–S

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.: 011284–066.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Atlantic Container Line; China Shipping Container Lines Co., Ltd; China Shipping Container Lines (Hong Kong) Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sudamericana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Maritime Corporation; Evergreen Line Joint Service Agreement; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Jeffrey F. Lawrence, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment restates the agreement and modifies the delegations of authority to the Senior Steering Committee, creates an Executive Committee and an Operations Council, and describes the voting procedures.

Agreement No.: 012085.

Title: 2007 Crane Purchase, Relocation and Modification Agreement Between Matson Navigation Company, Inc. and Horizon Lines, LLC.

Parties: Horizon Lines, LLC and Matson Navigation Company, Inc.

Filing Party: Matthew Thomas, Esq.; Reed Smith LLP; 301 K Street, NW.; Suite 1100–East Tower; Washington, DC 20005.

Synopsis: The agreement authorizes the parties to purchase cranes in Los Angeles to be transported for installation and use in Guam.

Agreement No.: 012086.

Title: Maersk Line/Horizon Lines Space Charter Agreement.

Parties: A.P. Moller-Maersk and Horizon Lines, LLC.

Filing Party: Matthew Thomas, Esq.; Reed Smith LLP; 301 K Street, NW.; Suite 1100–East Tower; Washington, DC 20005; and Wayne R. Rohde, Esq.; Sher and Blackwell LLP; 1850 M Street NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes Horizon Lines to charter space to Maersk Line on a trans-Pacific service string operated by Horizon Lines between ports in the U.S. Pacific Coast including Hawaii, Alaska, Guam and Spain and ports in the Peoples' Republic of China and Taiwan.

Dated: November 27, 2009.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–28818 Filed 12–2–09; 8:45 am]

BILLING CODE 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 part 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:

Embarque San Miguel, 294 Passaic Street, Passaic, NJ 07055, Officers: Berto L. Batista Urena, President (Qualifying Individual), Juan A. Rodriguez, Vice President.

CIF Group International, Inc., 11014 NW. 33rd Street, Ste. 109, Miami, FL 33172, Officer: Juniette D. Lopez, Director (Qualifying Individual).

Hyde Express LLC, 10025 NW. 116th Way, Ste. 2, Medley, FL 33178, Officers: Alfred C. McNab, Manager (Qualifying Individual), David M. Hyde, Member.

CN Worldwide Inc., 935 de La Gauchetiere Street West, Montreal, Quebec H2B 2M9, Canada, Officers: Anita Ernesaks, President (Qualifying Individual), Paul Tawel, Treasurer.

Efuge Corp., 17128 Colima Road, Ste. 202, Hacienda Heights, CA 91745, Officer: Beilin Zhao, President (Qualifying Individual).

Streamline Trade Management Inc., dba Teamwork Logistic, 177–25 Rockaway Blvd., Ste. 213, Jamaica, NY 11434, Officers: Bo Yu Zheng, Vice President (Qualifying Individual), Zhanming J. Chen, President.

Quality One International Shipping Express Corp., 636 Magenta Street, Bronx, NY 10467, Officers: Patrick Lee, President (Qualifying Individual), Marcia Donald, Secretary.

Synergy Freightways Pvt. Ltd., 602 Chiranjiv Tower, 43 Nehru Place, New Delhi, India, Officers: Vinod Mani, Vice President (Qualifying Individual), Sumer Singh, Director.

SPG Service, 95½ Prospect Street, Ste. 3, Newark, NJ 07105, Sandra P. Guevara, Sole Proprietor.

GB Ocean, Inc., 1510 Otterbein Ave., Rowland Hts, CA 91748, Officer: Bo (Burton) Qu, President (Qualifying Individual).

Vegano Shipping & Multi Services Corp., 165 Sherman Ave., New York, NY 10034, Officer: Pedro Sime, President (Qualifying Individual).

Pacific Road Logistics, Inc., 4909 Lakewood Blvd., Ste. 301, Lakewood, CA 90712, Officer: Choong (Phil) W. Kim, Secretary (Qualifying Individual).

E-Freight Solutions Inc., dba Fleet International Transport, 1990 N. Rosemead Blvd, Ste. 201, South El Monte, CA 91733, Officers: Joey Tam, President (Qualifying Individual), Yu Chi Lee, Secretary.

UPS Ocean Freight Services, Inc., 12380 Morris Road, Alpharetta, GA 30005, Officers: Jimmy Crabbe, Vice President (Qualifying Individual), Teri P. McClure, President.

Master Moving System, Inc., 9284 Talway Circle, Boynton Beach, FL 33472, Officer: Hanan Assayag, President (Qualifying Individual).

Kenneth Bola Obatusin, 10630 Riggs Hill Road, Bldg. R, Jessup, MD 20794, Officers: Kenneth B. Obatusin, CEO (Qualifying Individual).

Seapack Inc., 2820 NW. 105th Ave., Ste. B, Miami, FL 33172, Officer: Mark G. Kearns, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Kingscote Freight, Inc., 600 Bayview Avenue, Ste. 303, Inwood, NY 11096, Officers: Patricia Kelly, Vice President (Qualifying Individual), Jonathan Hales, President.

ICT International Cargo Transport (USA) Inc., 6909 Engle Road, Suite C–29, Middleburg Heights, OH 44130, Officers: Edward Zarefoss, Secretary (Qualifying Individual), Hendrik Rigtering, General Manager.

Beauty & Logistics, Corp. dba B&L Corp., 2814 NW. 112 Ave., Doral, FL 33172, Officer: Jean-Francois Blanc, President (Qualifying Individual).

Transcontinental Maritime Ltd., 2500

West Higgins Road, Suite 150, Hoffman Estates, IL 60195, Officers: Janet Fiore, Secretary (Qualifying Individual), David Kratt, President.

Elite Transportation Services, LLC dba Elite Logistics Worldwide, 6600 NE 78th Ct., Portland, OR 97218, Officer: David DeBoer, Vice President (Qualifying Individual).

Procargo USA LLC, 1360 NW. 78 Ave., Doral, FL 33126, Marcelo A. Leston, Manager (Qualifying Individual).

Temma Freight Logistics, Inc., 8372 NW. 68th Ter., Miami, FL 33166, Officers: Aymara Sucre, COO (Qualifying Individual), Gregorio Farfan, President.

Dakini International Logistics Inc., 36707 212th Way SE., Auburn, WA 98092, Officers: Terri L. Danz, Director (Qualifying Individual), Sharon A. Gunter, Director.

Airport Clearance Service, Inc. dba ACS Lines, 100 Lighting Way, Ste. 4000, Secaucus, NJ 07094, Officers: Jose I. Quesada, Dir. Global Pricing and Compliance (Qualifying Individual), Brian Posthumus, CEO.

Expeditionary Global Logistics, LLC dba Forward Express, 1900 Westridge Drive, Ste. 200, Irving, TX 75038, Officers: Rebecca L. Wibbeler, Member (Qualifying Individual), Hussen M. Haidar, Member.

Danesi USA, Inc., 7500 NW. 25th Street, Ste. 284, Miami, FL 33122, Officers: Jennifer Suarez, Manager (Qualifying Individual), Andrea Danesi, Director.

Marshal Freight Inc. dba Marshal Global, 6030 Riverside Drive, Ste. E, Chino, CA 91710, Officers: Jerick Cortes, CEO (Qualifying Individual), Maria Valderrama, President.

Dedicated Global Carriers, LLC, 4627 Town N. Country Blvd., Tampa, FL 33615, Officers: Robert J. Menendez, Manager (Qualifying Individual), Danny Mills, Vice President.

DGS Logistics, LLC dba DGS Ocean, 36 Evelyn Lane, Syosset, NY 11791, Officer: Patrick Jacob, Managing Member (Qualifying Individual).

Base Ventures Shipping dba Base Ventures International, 1405 Silver Lake Rd., NW., Ste. 201, New Brighton, MN 55112, Oluwaseyi Olawore, Sole Proprietor.

James J. Boyle & Co. dba JJB Link Logistics Company, Limited dba JJB Inland Logistics dba JJB Global, Logistics Co. Ltd., 1097 Sneath Lane, San Bruno, CA 94066, Officers: Greg Kodama, President (Qualifying Individual), Edward H. Inouye, CEO.

Oceanair Forwarding, Inc., 11232 St. Johns Ind Pkwy North, Ste. 6, Jacksonville, FL 32246, Officers: Philipus Suarto, Vice President (Qualifying Individual), Martin Pluis, President.

Chaucer Freight LLC, 909 AEC Drive, Wood Dale, IL 60191, Officer: Kathy Orzechowski, Operations Dir., (Qualifying Individual).

Newskin Express, Inc. dba NSK Logistics, Inc., 400 Crenshaw Blvd., Ste. 109, Torrance, CA 90503. Officer: Soo Jin Rho, President (Qualifying Individual).

Ocean Wings Logistics, Inc. dba LL Lines, 3340C Greens Rd., Ste. 555, Houston, TX 77032, Officers: Maria R. Banuelos, Secretary (Qualifying Individual), Thomas S. Passarra, President.

Navivan Corp., 200 Crofton Road, Ste. 2, Bldg. 10–B, Kenner, LA 70062, Officer: Ivan Lopez, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Cabell Export LLC dba Cabell Export, 6125 Bay Pond Road, Ravenel, SC 29470, Officer: Kathryn E. Hardee, Member (Qualifying Individual).

Sahbell International Services, 18174 Riversage Dr., Ste. 120, Houston, TX 77084, Saheed Bello, Sole Proprietor.

Barinco International Corp., 5777 W. Century Blvd., Ste. 990, Los Angeles, CA 90045, Officer: Kathleen Howden, President (Qualifying Individual).

UPS Supply Chain Solutions, Inc. dba Menlo Worldwide Forwarding, 12380 Morris Road, Alpharetta, GA 30005, Officers: Jimmy Crabbe, Vice President (Qualifying Individual), Christine Callahan, COO.

Eriksson Classics, Inc., 3002 FM 517 E, Dickinson, TX 77539, Officer: Niklas Carl-Erik Eriksson, President (Qualifying Individual).

Dated: November 30, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–28884 Filed 12–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–P–0330]

Determination That ABILIFY DISCMELT (Aripiprazole) Orally Disintegrating Tablets, 20 Milligrams and 30 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 milligrams (mg) and 30 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for aripiprazole orally disintegrating tablets, 20 mg and 30 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nam Kim, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6320, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the

''Orange Book.'' Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, are the subject of approved NDA 21–729 held by Otsuka Pharmaceutical Company, Limited (Otsuka). ABILIFY (aripiprazole) is indicated for the treatment of schizophrenia, for the acute and maintenance treatment of manic and mixed episodes associated with bipolar I disorder, as an adjunctive therapy to either lithium or valproate for the acute treatment of manic and mixed episodes associated with bipolar I disorder, for use as an adjunctive therapy to antidepressants for the treatment of major depressive disorder, for the treatment of irritability associated with autistic disorder, and for the acute treatment of agitation associated with schizophrenia or bipolar I disorder, manic or mixed.

FDA approved the NDA for ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, including the 20-mg and 30-mg strengths, on June 7, 2006. Otsuka has never marketed the 20-mg and 30-mg strengths of ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, and the 20-mg and 30-mg strength orally disintegrating tablets are listed in the ''Discontinued Drug Product List'' of the Orange Book.

Rakoczy Molino Mazzochi Siwik LLP submitted a citizen petition dated May 29, 2008 (Docket No. FDA–2008–P–0330), under 21 CFR 10.30, requesting that the agency (1) determine that ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, were discontinued from sale for reasons unrelated to safety and efficacy and (2) accept ANDAs for aripiprazole orally disintegrating tablets, 20 mg and 30 mg, and determine that such ANDAs are eligible for approval if all other legal and regulatory requirements are met. After considering the citizen petition and reviewing agency records, FDA has determined that ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, were not withdrawn from sale for reasons of safety or effectiveness. To date, Otsuka has not marketed ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg. In previous instances (see, e.g., 72 FR 9763, March 5, 2007; 61 FR 25497, May 21, 1996), the agency has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

The petitioner identified no data or other information suggesting that ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, were withdrawn from sale as a result of safety or effectiveness concerns. FDA has reviewed its files for records concerning the withdrawal of ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg. There is no indication that Otsuka's decision not to market ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, commercially is a function of safety or effectiveness concerns, and no information has been submitted to the docket concerning the reason for which ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, were withdrawn from sale. FDA's independent evaluation of relevant information has uncovered nothing that would indicate that ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, were withdrawn from sale for reasons of safety or effectiveness.

For the reasons outlined in this document, FDA has determined that ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ABILIFY DISCMELT (aripiprazole) orally disintegrating tablets, 20 mg and 30 mg, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: November 30, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28871 Filed 12–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–P–0560]

Determination That MESANTOIN (Mephenytoin) Tablets, 100 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that MESANTOIN (mephenytoin) Tablets, 100 milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for mephenytoin tablets, 100 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6312, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs.

FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Schiff & Co. submitted a citizen petition dated October 16, 2008 (Docket No. FDA–2008–P–0560), under 21 CFR 10.30, requesting that the agency determine whether MESANTOIN (mephenytoin) Tablets, 100 mg, was withdrawn from sale for reasons of safety or effectiveness. MESANTOIN (mephenytoin) Tablets, 100 mg, is the subject of NDA 6–008, held by Novartis and initially approved on October 23, 1946. MESANTOIN is indicated to control grand mal, local, Jacksonian, and psychomotor seizures in patients who have been refractory to less toxic anticonvulsants. In a letter dated January 13, 2000, Novartis notified FDA that MESANTOIN (mephenytoin) Tablets, 100 mg, was being discontinued and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

FDA has reviewed its records and, under § 314.161, has determined that MESANTOIN (mephenytoin) Tablets, 100 mg, was not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that MESANTOIN (mephenytoin) Tablets, 100 mg, was withdrawn for reasons of safety or effectiveness. FDA has independently evaluated relevant literature and data for possible postmarketing adverse events and has found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list MESANTOIN (mephenytoin) Tablets, 100 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to MESANTOIN (mephenytoin) Tablets, 100 mg, may be approved by the agency if all other legal and regulatory requirements for the approval of ANDAs are met. If FDA determines that labeling for this drug product should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: November 30, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–28872 Filed 12–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0138]

Homeland Security Advisory Council

AGENCY: The Office of Policy, DHS.

ACTION: Notice of Cancellation of the Homeland Security Advisory Council Federal Advisory Committee Meeting.

SUMMARY: The meeting of the Homeland Security Advisory Council, scheduled for December 4, 2009 from 3 to 4 p.m. EST is cancelled. Notice of this meeting was published in the November 10, 2009 **Federal Register** (Volume 74, Number 216) at DHS–2009–0138.

FOR FURTHER INFORMATION CONTACT: Contact the HSAC staff at 202–447–3135 or *hsac@dhs.gov.*

SUPPLEMENTARY INFORMATION: The HSAC provides independent advice to the Secretary of the Department of Homeland Security to aide in the creation and implementation of critical and actionable policies and capabilities across the spectrum of homeland security operations. The HSAC periodically reports, as requested, to the Secretary, on such matters. Notice of cancellation of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended, 5 U.S.C. App.

Dated: November 25, 2009.

Becca Sharp,

Executive Director, Homeland Security Advisory Committee.

[FR Doc. E9–28861 Filed 12–2–09; 8:45 am]

BILLING CODE 9010–9M–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application-Permit-Special License Unlading-Lading-Overtime Services

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0005.

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: Application-Permit-Special License Unlading-Lading-Overtime Services (Form 3171). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no 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 50811) on October 1, 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 January 4, 2010.

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: Application-Permit-Special License Unlading-Lading-Overtime Services.

OMB Number: 1651–0005.

Form Number: Form 3171.

Abstract: Form 3171 is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers, and for overtime services of CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,500.

Estimated Number of Annual Responses per Respondent: 266.

Estimated Number of Total Annual Responses: 399,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 51,870.

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: November 27, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–28854 Filed 12–2–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–37]

Notice of Proposed Information Collection: Comment Request; Multifamily Default Status Report

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* February 1, 2010.

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: Howard Mayfield, Deputy Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 402–2558 (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 Default Status Report.

OMB Control Number, if applicable: 2502–0041.

Description of the need for the information and proposed use: Mortgagees use this information collection to notify HUD that a project owner is more than 30 days past due on a mortgage payment and to elect to assign a mortgage to the Department (per regulations at 24 CFR part 207.256). To avoid an assignment of mortgage to HUD, which costs the Government millions of dollars each year, HUD and the mortgagor may develop a plan for reinstating the loan since HUD uses the information as an early warning mechanism. HUD Field Office and Headquarters staff use the data to (a) monitor mortgagee compliance with HUD's loan servicing procedures and assignments; and (b) avoid mortgage assignments in the future. This information is submitted electronically via the Internet.

Agency form numbers, if applicable: HUD–92426.

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 1,256. The number of respondents is 63, the number of responses is 7,542, the frequency of response is 120, and the burden hour per response is 10 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 30, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9–28888 Filed 12–2–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act (NEPA) Implementing Procedures

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed change to the Departmental Manual; request for comments.

SUMMARY: The Department of the Interior (Department) proposes to

amend its Departmental Manual (DM) by adding a new chapter to provide supplementary requirements for implementing the National Environmental Policy Act (NEPA) within the Department's Office of Hawaiian Relations (OHR). By publishing these changes in the **Federal Register**, the Department intends to promote greater transparency and accountability to the public and enhance cooperative conservation.

DATES: Submit comments by January 4, 2010.

ADDRESSES: You may submit comments by any of the following methods. Please reference 516 DM 7 in your message. See also ''Public availability of comments'' under Procedural Requirements below.

- E-mail *kaiini.kaloi@ios.doi.gov* and use the reference ''516 DM 7'' in the subject line.
- Fax: 202–208–3698. Identify with ''516 DM 7''.
- Mail or hand-carry comments to the Department of the Interior, Office of Hawaiian Relations, Room Number 3543, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Please reference ''516 DM 7'' in your comments and also include your name and return address.
- 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 at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Ka'i'ini Kaloi, Director; Office of Hawaiian Relations; 1849 C Street, NW.; Washington, DC 20240. Telephone: 202–513–0712. E-mail: *kaiini.kaloi@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: Congress passed the Hawaiian Homes Commission Act (HHCA) in 1921, creating the Commission and designating approximately 200,000 acres available to rehabilitate the indigenous Hawaiian population by providing them with access to farm and homestead land. Under section 204(3) of the HHCA, ch. 42, 42 Stat. 110 (1921), all available lands were to become Hawaiian Home lands under control of the Commission, provided that ''such lands should assume the status of the Hawaiian Home lands until the Commission, with the approval of the Secretary of the Interior, makes the selection and gives notice thereof to the Commissioner of Public Lands.'' 42 Stat. 110 (1921).

Thirty-three years later, Congress passed the Act of June 18, 1954, ch. 319, 68 Stat. 262, which amended the HHCA, adding new subsection 204(4) ''to permit the [Commission] to exchange available lands as designated by the Act, for public land of equal value.'' H.R. Rep. No. 1517, 83d Cong., 2d Sess. (1954); S. Rep. No. 1486, 83d Cong., 2d Sess. 2 (1954). New section 204(4) provided that ''the Commission may with the approval of the Governor (Governor approval no longer required) and the Secretary of the Interior, in purposes of this Act, exchange title to available lands for land publicly owned, of equal value.'' 68 Stat. 262 (1954). Hence, it was clear Congress intended the Commission would not have the authority to consummate any land exchange without secretarial approval.

After Hawaii was admitted to the Union in 1959, the responsibility for the administration of the Hawaiian Home lands was transferred to the State of Hawaii. Section 4 of the Hawaiian Admission Act, Public Law 86–3, 73 Stat. 5 (1959), 48 U.S.C. nt. Prec. § 491 (1982) provides: ''[A]s a compact with the United States relating to the management and disposition of the Hawaiian Home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of such State.'' Thus, secretarial approval remained necessary before the Commission was empowered to conduct land exchanges.

In 1995, Congress again iterated its intent to have the Secretary provide oversight of land exchanges occurring under the auspices of the HHCA. The Hawaiian Home Lands Recovery Act of 1995 (HHLRA), Public Law 104–42, 109 Stat. 357, gave oversight responsibilities to the Secretary of the Department of Interior to ensure that real property under the HHCA is, among other things, administered in a manner which best serves the interests of the beneficiaries.

The words of section 204(3) of the HHCA make clear that a land exchange is not valid until it has been approved by the Secretary (or his designee), but does not suggest that the Secretary is required to approve every land exchange placed before him. Indeed, the Secretary must at a minimum, satisfy himself that either of the purposes set forth in section 204(3) is met (*i.e.,* that the exchange would consolidate Homes Commission holdings, or that it would help to ''better effectuate'' the purposes of the Homes Commission Act), and that the lands proposed for exchange are ''of an equal value''. Each of these elements requires the exercise of judgment, most particularly the element of equal value for land valuations can be highly subjective and land appraisals are understood to represent an art, not a science. Because the discharge of the responsibility placed on the Secretary is discretionary and not ministerial, approval of a land exchange is subject to NEPA. In general, section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C) provides that a ''detailed statement'' must be prepared whenever a major Federal action will have a significant impact on the quality of the human environment.

Compliance Statements:

1. Regulatory Planning and Review (E.O. 12866).

This document is not a significant policy change and the Office of Management and Budget (OMB) has not reviewed this DM change under E.O. 12866. We have made the assessments required by E.O. 12866 and have determined that this departmental policy:

(1) Will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

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

(4) Does not raise novel legal or policy issues.

2. Regulatory Flexibility Act.

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. Small Business Regulatory Enforcement Fairness Act (SBREFA).

This DM change is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The OMB made the determination that this DM change:

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

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

c. 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.

4. Unfunded Mandates Reform Act.

This departmental manual change does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630).

Under the criteria in E.O. 12630, this departmental manual change does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132).

Under the criteria in E.O. 13132, this DM change does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

7. Consultation With Indian tribes (E.O. 13175).

Under the criteria in E.O. 13175, we have evaluated this DM change and determined that it has no potential effects on federally recognized Indian tribes since Native Hawaiians are not a federally recognized Indian tribe.

8. National Environmental Policy Act.

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd 230 F.3d 947. 954–55 (7th Cir. 2000).

9. Paperwork Reduction Act.

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act is not required.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

For the reasons stated in the preamble, the Department proposes to amend its DM by adding a new chapter to provide supplementary requirements for implementing provisions of 516 DM 1 through 4 within the Department's Office of Hawaiian Relations (OHR), as set forth below:

PART 516: NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

CHAPTER 7: MANAGING THE NEPA PROCESS—OFFICE OF HAWAIIAN RELATIONS

7.1 Purpose. This Chapter provides supplementary requirements for implementing provisions of 516 DM 1 through 6 within the Department's Office of Hawaiian Relations.

7.2 NEPA Responsibility.

A. The Director of the Office of Hawaiian Relations is responsible for NEPA compliance for OHR activities.

B. The Director of the Office of Hawaiian Relations, in conjunction with the Office of Environmental Policy Compliance, provides direction and oversight for environmental activities, including the implementation of NEPA.

C. The OHR may request the Department of Hawaiian Home Lands (DHHL) to assist in preparing NEPA documentation for a proposed action submitted by the Secretary.

7.3 Guidance to DHHL.

A. Actions Proposed by the DHHL requiring OHR or other Federal approval.

(1) The OHR retains sole responsibility and discretion in all NEPA compliance matters related to the proposed action, although the Director of OHR may request the DHHL to assist in preparing all NEPA documentation.

B. Actions proposed by the DHHL not requiring Federal approval, funding, or official actions, are not subject to NEPA requirements.

7.4 Actions Normally Requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if these activities are connected to a land exchange requiring the Secretary's approval.

A. The following actions require preparation of an EA or EIS:

(1) Actions not categorically excluded; or

(2) Actions involving extraordinary circumstances as provided in 43 C.F.R. Part 46.215.

B. Actions not categorically excluded or involving extraordinary circumstances as provided in 43 C.F.R. Part 46.210, will require an EA when:

(1) An EA will be used in deciding whether a finding of no significant impact is appropriate, or whether an EIS is required prior to implementing any action.

(2) The action is not being addressed by an EIS.

C. If an EA is prepared, it will comply with the requirements of 43 CFR part 46 subpart D.

D. The following actions normally require the preparation of an EIS:

(1) Proposed water development projects which would inundate more than 1,000 acres of land, or store more than 30,000 acre-feet of water, or irrigate more than 5,000 acres of undeveloped land.

(2) Construction of a treatment, storage or disposal facility for hazardous waste or toxic substances.

(3) Construction of a solid waste facility.

E. If an EIS is prepared, it will comply with the requirements of 43 CFR part 46 subpart E

7.5 Categorical Exclusion. In addition to the actions listed in the Departmental categorical exclusions specified in section 43 C.F.R. 46.210, the following action is categorically excluded unless any of the extraordinary circumstances in section 43 C.F.R. 46.215 apply, thus requiring an EA or an EIS. This activity is a single, independent action not associated with larger, existing or proposed complexes or facilities.

A. Approval of conveyances, exchanges and other transfers of land or interests in land between DHHL, and an agency of the State of Hawaii, or a Federal agency, where no change in the land use is planned.

[FR Doc. E9–28879 Filed 12–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD00000 L19900000.AL 0000]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, December 11, 2009, from 1 p.m. to 4:30 p.m. and will meet in formal session on Saturday, December 12, from 8 a.m. to 4 p.m. at the Courtyard by Marriott Palm Desert, 74895 Frank Sinatra Drive, Palm Desert, CA 92211. Agenda topics will include

updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics may include updates on legislation and renewable energy. Final agenda items, including details of the field tour, will be posted on the BLM California State Web site at *http://www.blm.gov/ca/st/en/info/rac/dac.html.*

SUPPLEMENTARY INFORMATION: All California Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the meeting is tentatively scheduled to conclude at 4 p.m. on Saturday, it could conclude earlier should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, (951) 697–5220.

Dated: November 16, 2009.

Steven J. Borchard,

District Manager.

[FR Doc. E9–28504 Filed 12–2–09; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–462 (Final) and 731–TA–1156–1158 (Final)]

Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–462 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–1156–1158 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports of polyethylene retail carrier bags (''PRCBs'') from Vietnam and less-than-fair-value imports of PRCBs from Indonesia, Taiwan, and Vietnam, provided for in subheading 3923.21.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* October 27, 2009.

FOR FURTHER INFORMATION CONTACT: Joshua Kaplan (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Vietnam of PRCBs, and that such products from Indonesia, Taiwan, and Vietnam are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 31, 2009, by Hilex Poly Co., LLC, Hartsville, SC and Superbag Corp., Houston, TX.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, e.g., grocery, drug, convenience, department, specialty retail, discount stores, and restaurants to their customers to package and carry their purchased products. The scope of these investigations excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 2, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 16, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 12, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 11, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 9, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 23, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petitions, on or before March 23, 2010. On April 7, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 9, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in section II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 30, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–28853 Filed 12–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on July 16, 2009, Noramco, Inc., Division of Ortho-McNeil, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Opium, raw (9600)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–28826 Filed 12–2–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part.

SUMMARY: The Mine Safety and Health Administration (MSHA) enforces mine operator compliance with mandatory safety and health standards that protect miners and improve safety and health conditions in U.S. mines. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at

http://www.msha.gov/indexes/petition.htm. The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Deputy Director, Office of Standards, Regulations and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (E-mail), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2007–054–C.
FR Notice: 72 FR 53265 (September 18, 2007).
Petitioner: Chestnut Coal Company, RR 3, Box 142, Sunbury, Pennsylvania 17801.
Mine: No. 13 Slope (Formerly No. 11 Slope), MSHA I.D. No. 36–09475, located in Northumberland County, Pennsylvania.
Regulation Affected: 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment).

• *Docket Number:* M–2008–011–C.
FR Notice: 73 FR 20066 (April 14, 2008).
Petitioner: Chevron Mining, Inc., 12398 New Lexington Road, Berry, Alabama 35546.
Mine: North River No. 1 Mine, MSHA I.D. 01–00759, located in Fayette County, Alabama.
Regulation Affected: 30 CFR 75.507 (Power connection points).

• *Docket Number:* M–2008–032–C.
FR Notice: 73 FR 38250 (July 3, 2008).
Petitioner: Double Bonus Coal Company, P.O. Box 414, Pineville, West Virginia 24874.
Mine: No. 65 Mine, MSHA I.D. 46–09020, located in Wyoming County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–033–C.
FR Notice: 73 FR 42599 (July 22, 2008).
Petitioner: Penn View Mining Company, Inc., 2340 Smith Road, Shelocta, Pennsylvania 15774.
Mine: TJS #6 Mine, MSHA I.D. No. 36–09464, located in Armstrong County, Pennsylvania.
Regulation Affected: 30 CFR 75.503 (30 CFR 18.35) (Permissible electric equipment; maintenance).

• *Docket Number:* M–2008–039–C.
FR Notice: 73 FR 54434 (September 19, 2008).
Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.
Mine: Dora 8 Mine, MSHA I.D. No. 36–08704, located in Jefferson County, Pennsylvania.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–040–C.
FR Notice: 73 FR 54434 (September 19, 2008).
Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.
Mine: Madison Mine, MSHA I.D. No. 36–09127, located in Cambria County, Pennsylvania.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–041–C.
FR Notice: 73 FR 54434 (September 19, 2008).
Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.
Mine: Gillhouser Run Mine, MSHA I.D. No. 36–09033, located in Indiana County, Pennsylvania.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–042–C.
FR Notice: 73 FR 54434 (September 19, 2008).
Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.
Mine: Ondo Extension Mine, MSHA I.D. No. 36–09005, located in Indiana County, Pennsylvania.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–0043–C.
FR Notice: 73 FR 54434 (September 19, 2008).
Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.
Mine: Nolo Mine, MSHA I.D. No. 36–08850, located in Indiana County, Pennsylvania.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray system).

• *Docket Number:* M–2008–045–C.
FR Notice: 73 FR 61913 (October 17, 2008).
Petitioner: Guest Mountain Mining Corporation, P.O. Box 2560, Wise, Virginia 24293.
Mine: Mine No. 4, MSHA I.D. No. 44–05815, located in Wise County, Virginia.
Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

• *Docket Number:* M–2008–048–C.
FR Notice: 73 FR 69680 (November 19, 2008).
Petitioner: Mountain Edge Mining, Inc., P.O. Box, 2226, Beckley, West Virginia 25802–2226.
Mine: Coalburg No. 1 Mine, I.D. No. 46–09082, located in Boone County, West Virginia.
Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2008–049–C.
FR Notice: 73 FR 80434 (December 31, 2008).
Petitioner: Knight Hawk Coal, LLC, 7290 County Line Road, Cutler, Illinois 62238.
Mine: Prairie Eagle South Mine, MSHA I.D. 11–03205, located in Perry County, Illinois.
Regulation Affected: 30 CFR 75.503 (30 CFR 18.35) (Permissible electric equipment; maintenance).

• *Docket Number:* M–2008–050–C.
FR Notice: 73 FR 80434 (December 31, 2008).
Petitioner: River View Coal, LLC, 835 State Route 1179, Waverly, Kentucky 42462.
Mine: River View Mine, MSHA I.D. 15–03178 (New MSHA I.D. No. 15–19374), located in Union County, Kentucky.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2008–051–C.
FR Notice: 73 FR 80434 (December 31, 2008).
Petitioner: River View Coal, LLC, 835 State Route 1179, Waverly, Kentucky 42462.
Mine: River View Mine, MSHA I.D. 15–03178 (New MSHA I.D. No. 15–

19374), located in Union County, Kentucky.

Regulation Affected: 30 CFR 75.503 (30 CFR 18.35) (Permissible electric equipment; maintenance).

• *Docket Number:* M–2008–056–C.

FR Notice: 74 FR 4470 (January 26, 2009).

Petitioner: Midland Trail Energy, LLC, 42 Rensford Star Route, Charleston, West Virginia 25306.

Mine: Blue Creek No. 1 Mine, MSHA I.D. 46–09297; and Blue Creek No. 2 Mine, MSHA I.D. No. 46–09296, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers).

• *Docket Number:* M–2008–057–C.

FR Notice: 74 FR 4471 (January 26, 2009).

Petitioner: Midland Trail Energy, LLC, 42 Rensford Star Route, Charleston, West Virginia 25306.

Mine: Blue Creek No. 1 Mine, MSHA I.D. 46–09297, and Blue Creek No. 2 Mine, MSHA I.D. No. 46–09296, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

• *Docket Number:* M–2008–006–M.

FR Notice: 74 FR 4471 (January 26, 2009).

Petitioner: Solvay Chemicals, Inc., P.O. Box 1167, Green River, Wyoming 82935.

Mine: Solvay Chemicals Mine, MSHA I.D. 48–01295, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

Dated: November 27, 2009.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9–28849 Filed 12–2–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before January 4, 2010.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2009–037–C.

Petitioner: The Signal Peak Energy, LLC, 100 Portal Drive, Roundup, Montana 59072.

Mine: Bull Mountain #1 Mine, MSHA I. D No. 24–01950, located in Musselshell County, Montana.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible, diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of the Getman Roadbuilder, Model RDG–1504S, with six (6) wheels, without front brakes as it was originally designed. The existing standard requires that all self-propelled non-permissible diesel-powered equipment must have service brakes that act on each wheel of the vehicle and be designed such that a failure of any single component, except the brake actuation pedal or other similar actuation device, must not result in a complete loss of service braking capability. The petitioner states that: (1) This rule does not address equipment with more than four (4) wheels, specifically the Getman Roadbuilder, Model RDG–1504S, with six (6) wheels; (2) this machine has dual brake systems on the four (4) rear wheels, and is designed to prevent loss of braking due to a single component failure; (3) seventy-four percent of the machines total weight is over the four (4) rear wheels. With this weight distribution, brakes on the rear of the machine are sufficient to safely stop the machine; (4) grader operators will be trained to lower the moldboard to provide additional stopping capability in emergency situations, to recognize the appropriate speeds to use on different roadway conditions, and to limit the maximum speed to 10 miles per hour. Maintaining this maximum speed will be accomplished through physically blocking out higher gear ratios. Other mechanical means, such as installation of smaller diameter tires, which accomplish this speed governing, may also be used when working with different roadway conditions and different slopes. This training will be documented on an approved 5000–23 form. The petitioner asserts that granting this petition will prevent the diminution of safety caused by application of the existing standard to this particular equipment, and will at all times provide an equal or superior

degree of safety as that provided by the standard.

Docket Number: M–2009–038–C.

Petitioner: Shamrock Coal Company, 1374 Highway, 192 East, London, Kentucky 40741.

Mine: #18 Mine, MSHA I.D. No. 15–02502, located in Leslie County, Kentucky.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased for supplying power to the permissible pumps in the mine. The petitioner states that: (1) This petition will apply only to trailing cables supplying three-phase, 480-volt power for permissible pumps; (2) the maximum length of the 480-volt power for permissible pump will be 4,000 feet: (3) the 480-volt trailing cables supplying power to permissible pumps will not be smaller than #6 American Wire Gauge (AWG); (4) the circuit breakers used to protect trailing cables exceeding the pump approval length of Table 9 of Part 18 will have an instantaneous trip unit calibrated to trip at 75 percent of phase to phase short circuit current. The trip setting of these circuit breakers will be sealed or locked, and these circuit breakers will have permanent legible labels. Each label will identify the circuit breaker as being suitable for protecting the trailing cables, and the labels will be maintained legible. In instances where 75 percent instantaneous set point will not allow a pump to start due to motor inrush, a thermal magnetic breaker will be furnished. The thermal rating of the circuit breaker will be no greater than 75 percent of the available short circuit current and the instantaneous setting will be adjusted one setting above the motor inrush trip point. This setting will also be sealed or locked; (5) replacement instantaneous trip units used to protect pump trailing cables exceeding the length of Table 9 of Part 18 will be calibrated to trip at 75 percent of the available phase to phase short circuit current and this setting will be sealed or locked; (6) permanent warning labels will be installed and maintained on the cover(s) of the power center to identify the location of each sealed or locked short-circuit protection device. These labels will warn miners not to change or alter the short circuit settings; (7) the mines current pump circuits that have greater lengths than approved or in Table 9 are attached. All future pump installation with excessive cable lengths will have a short circuit survey conducted and items 1–6 will be implemented.

A copy of each pumps' short circuit survey will be available at the mine site for inspection; (8) the alternative method will not be implemented until miners who have been designated to examine the integrity of seals or locks, verify the short-circuit settings, and proper procedures for examining trailing cables for defects and damage have received the elements of training. The petitioner further states that: (1) Within 60 days after the Proposed Decision and Order becomes final, proposed revisions for approved 30 CFR Part 48 training plan at any of the listed mines will be submitted to the Coal Mine Safety and Health District Manager. The training plan will include: (a) Training in the mining methods and operating procedures for protecting the trailing cables against damage; (b) training in proper procedures for examining the trailing cables to ensure they are in safe operating condition; (c) training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; (d) training in how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained; and (e) the procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners at Shamrock Coal provided by the existing standard.

Docket Number: M–2009–039–C.

Petitioner: Consol Pennsylvania Coal Company, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

Mine: Enlow Fork Mine, MSHA I.D. No. 36–07416, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with respect to vertical Coal Bed Methane (CBM) degasification wells with horizontal laterals into the underground coal seam. The petitioner proposes to plug vertically drilled CBM degasification wells with horizontal laterals. The petitioner proposes the following procedures: (1) Prior to the anticipated mine through, the borehole will be filled with cementatious grout, polyurethane grout, silica gel, flexible gel, or another material approved by the District Manager; (2) a packer will be installed at a location in the borehole to ensure that an appropriate amount of the borehole is filled with the plugging material, and any water present in the borehole will be tested for chlorides prior to plugging; (3) a pump will be used to pump 1.75 times the calculated borehole volume of the plugging material into the borehole. The calculated volume of the plugging material will be pumped until the volume of the plugging material is depleted, 100–140 psi pressure is realized, or until leakage is observed underground. The plugging material will be pumped through a packer equipped with a one-way check valve. The one-way check valve will prevent the plugging material from flowing back; (4) the volume of fill material required will be calculated and 1.75 times that amount will be pumped unless the 100–140 psi pressure is reached; and (5) a directional deviation survey completed during the drilling of the borehole will be used to determine the location of the borehole within the coal seam. The petitioner states that water infusion and ventilation of vertical CBM wells with horizontal laterals may be used in lieu of plugging where suitable plugging procedures have not yet been developed or are impractical. The petitioner also proposes to mine through a CBM degasification well with horizontal laterals. The District Manager or designee will be notified prior to mining within 300 feet of the well and when a specific plan is developed for mining through each well. Persons may review a complete description of the petitioner's alternative method and procedures at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners at the Enlow Fork Mine as would be provided by the existing standard.

Docket Number: M–2009–040–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, 1000 Consol Energy Drive, Canonsburg, Pennsylvania 15317.

Mine: Bailey Mine, MSHA I.D. No. 36–07230, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with respect to vertical Coal Bed Methane (CBM) degasification wells with horizontal laterals into the underground coal seam. The petitioner proposes to plug vertically drilled CBM degasification wells with horizontal laterals. The petitioner proposes the following procedures: (1) Prior to the anticipated mine through, the borehole will be filled

with cementatious grout, polyurethane grout, silica gel, flexible gel, or another material approved by the District Manager; (2) a packer will be installed at a location in the borehole to ensure that an appropriate amount of the borehole is filled with the plugging material, and any water present in the borehole will be tested for chlorides prior to plugging; (3) a pump will be used to pump 1.75 times the calculated borehole volume of the plugging material into the borehole. The calculated volume of the plugging material will be pumped until the volume of the plugging material is depleted, 100–140 psi pressure is realized, or until leakage is observed underground. The plugging material will be pumped through a packer equipped with a one-way check valve. The one-way check valve will prevent the plugging material from flowing back; (4) the volume of fill material required will be calculated and 1.75 times that amount will be pumped unless the 100–140 psi pressure is reached; and (5) a directional deviation survey completed during the drilling of the borehole will be used to determine the location of the borehole within the coal seam. The petitioner states that water infusion and ventilation of vertical CBM wells with horizontal laterals may be used in lieu of plugging where suitable plugging procedures have not yet been developed or are impractical. The petitioner also proposes to mine through a CBM degasification well with horizontal laterals. The District Manager or designee will be notified prior to mining within 300 feet of the well and when a specific plan is developed for mining through each well. Persons may review a complete description of the petitioner's alternative method and procedures at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners at the Bailey Mine as would be provided by the existing standard.

Docket Number: M–2009–041–C.

Petitioner: ICG Illinois, LLC, 8100 East Main Street, Williamsville, Illinois 62693.

Mine: Viper Mine, MSHA I.D. No. 11–02664, located in Sangamon County, Illinois.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit weekly examinations and functional testing of the deluge system to be conducted in lieu of providing blow-off dust covers. The petitioner states that: (1) Conducting the weekly examination and functional test of the deluge system will provide an improvement in safety and ensure that the nozzles do not become clogged; and (2) replacing the dust caps after such test can create an unnecessary hazard by exposing miners to the risk of a slip and fall type accident. The petitioner proposes to use the following procedures when implementing the proposed alternative method: (1) Have a person trained in the testing procedures specific to the deluge-type water spray system used at each belt drive once every 7 days will (a) conduct a visual examination of each of the deluge-type water spray fire suppression systems; (b) conduct a functional test of the deluge-type water spray fire-suppression systems by actuating the system and observing its performance; and (c) record the results of the examination and functional test in a book maintained on the surface and made available to the authorized representative of the Secretary and retained at the mine for one year: (2) any malfunction or clogged nozzle detected as a result of the weekly examination or functional test will be corrected immediately: (3) the procedures used to perform the functional test will be posted at or near each belt drive which utilizes a deluge-type water spray fire suppression system. The petitioner asserts that the proposed alternative method will result in no less protection for personnel than that afforded by the existing standard.

Dated: November 27, 2009.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9–28850 Filed 12–2–09; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

U.S. Chief Financial Officer Council; Grants Policy Committee

ACTION: Notice of open stakeholder Webcast meeting.

SUMMARY: This notice announces an open stakeholder Webcast meeting sponsored by the Grants Policy Committee (GPC) of the U.S. Chief Financial Officers (CFO) Council.

DATES: The GPC will hold a Webcast meeting on Thursday, December 10, 2009 from 2–3:30 p.m., Eastern Time. The Webcast will be broadcast live. Relevant meeting materials will be posted on *http://www.GPC.gov* in advance of the meeting.

ADDRESSES: The GPC December 10th Webcast meeting will be broadcast from and held in Room B–180 of the U.S. Department of Housing and Urban Development (HUD), 451 7th Street, SW., Washington, DC 20410. Seating is limited—the first 35 people to respond, and receive confirmation of the response, can be part of the live audience. Both Federal and non-Federal employees must R.S.V.P. to reserve a seat by contacting Charisse Carney-Nunes at *GPCWebcast@nsf.gov*. All who have reserved seating must arrive in the HUD studio fifteen minutes prior to broadcast (arrive on the north side of the building). You must have a government-issued photo ID to gain access and will have to go through security screening. The GPC encourages non-federal organizations' staffs and members to attend the meeting in person or via Webcast.

Overview: The purpose of this Webcast is to provide a forum for the grants community to ask questions to the Recovery Accountability and Transparency Board (RATB) about Recovery Act grants reporting requirements. The RATB will provide a general overview of Recovery Act reporting, lessons learned, and what grantees need to know to report accurately. The U.S Government Accountability Office (GAO) will share information on their recent report on Recovery Act recipient reporting, dated 11/19/09. The Office of Management and Budget (OMB) will discuss the Single Audit Pilot for Recovery Act Funds. Webcast presenters will be available for a question & answer period after each presentation and for a final question and answer period after all presentations.

Further Information About the GPC Webcast: Questions on the Webcast should be directed to Charisse Carney-Nunes, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; e-mail, *GPCWebcast@nsf.gov*. Information and materials that pertain to this Webcast meeting, including the call-in telephone number and the agenda will be posted on the Grants Policy Committee's Website at *http://www.GPC.gov* on the ''Webcasts and Outreach'' page. The link to view the Webcast will be posted on this site, along with Webcast instructions. After the meeting, a link to its recording will be posted on *http://www.GPC.gov* for at least 90 days.

Comment Submission Information: You may submit Webcast topic-related questions in advance of the webcast to *GPCWebcast@nsf.gov*. You may also submit comments during the Webcast meeting via telephone or e-mail. The call-in telephone number, which may be used only *during* the live Webcast, is

202–708–0995. The e-mail address for comments, which should be used only *during* the Webcast is *HUDTV@HUD.GOV*. After the Webcast, you may submit comments via email through the close of business on Wednesday, December 23, 2009. The e-mail address for comments before and after the Webcast is *GPCWebcast@nsf.gov.*

SUPPLEMENTARY INFORMATION: This Webcast meeting has been made possible by the cooperation of the National Science Foundation, HUD, and the GPC.

Webcast Materials: Webcast materials including the agenda, Webcast meeting slides, and the feedback form are posted at *http://www.GPC.gov* on the Webcasts and Outreach page. An archived version of this Webcast will be available in Windows Media format on the Webcasts and Outreach page of *http://www.GPC.gov* soon after this Webcast is broadcasted. Archived versions of the 2006, 2007, 2008, and 2009 GPC Stakeholder Webcasts are available for viewing at: *http://www.hud.gov/webcasts/archives/grantspolicy.cfm.*

Purpose of the Webcast meeting: The purpose of this Webcast is to provide a forum for the grants community to ask questions to the Recovery Accountability and Transparency Board (RATB) about Recovery Act grants reporting requirements.

Meeting structure and agenda: The December 10th Webcast meeting will have the following structure and agenda:

(1) Introduction;

(2) American Recovery and Reinvestment Act (ARRA) Reporting Overview, Lessons Learned, and Question and Answer (Q & A);

(3) Government Accountability Office Findings on ARRA Recipient Reporting and Q & A;

(4) Single Audit Pilot on ARRA Funds and Q & A;

(5) Quick GPC Update;

(6) Final Q & A; and

(7) Close.

Background: The GPC is a committee of the U.S. Chief Financial Officers (CFO) Council. The Office of Management and Budget (OMB) sponsors the GPC; its membership consists of grants policy subject matter experts from across the Federal Government. The GPC is charged with improving the management of federal financial assistance government-wide. To carry out that role, the committee recommends financial assistance policies and practices to OMB and coordinates related interagency activities. The GPC serves the public interest in collaboration with other Federal Government-wide grants initiatives.

Dated: November 30, 2009.

Thomas N. Cooley,

Director, Office of Budget, Finance and Award Management of the National Science Foundation and Chair of the Grants Policy Committee of the U.S. CFO Council.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–28878 Filed 12–2–09; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

Federal Register *Citation of Previous Announcement*: 74 FR 61380 (November 24, 2009).

Previously Announced Time and Date of Meeting: 11 a.m., Wednesday, December 2, 2009.

CHANGES IN THE MEETING: The agenda has been expanded to include discussion, in open session, of whether to provide audio streaming of the public portion of monthly Commission meetings.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, 202–789–6824 or *stephen.sharfman@prc.gov*.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–29000 Filed 12–1–09; 4:15 pm]

BILLING CODE 7710–FW–S

POSTAL SERVICE

Change in Rates and Classes of General Applicability for Competitive Products

AGENCY: Postal Service.

ACTION: Notice of a change in rates of general applicability for competitive products.

SUMMARY: This notice sets forth changes in rates of general applicability for competitive products.

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

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., 202–268–2989.

SUPPLEMENTARY INFORMATION: On September 22, 2009, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for competitive products. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with § 3632(b)(2). Implementing regulations were published in the **Federal Register** on November 10, 2009 (74 FR 57899).

Stanley F. Mires,

Chief Counsel, Legislative.

Governors' Decision No. 09–13

Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Competitive Products (Governors' Decision No. 09–13)

September 22, 2009

Statement of Explanation and Justification

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish new prices of general applicability for the Postal Service's shipping services (competitive products), and such changes in classifications as are necessary to define the new prices. The changes are described generally below, with a detailed description of the changes in the attachment. The attachment includes the draft Mail Classification Schedule sections with changes in classification language in legislative format, and new prices displayed in the price charts.

As shown in the nonpublic annex being filed under seal herewith, the changes we establish should enable each competitive product to cover its attributable costs (39 U.S.C. 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7(c), requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. 3633(a)(1)). We therefore find that the new prices and classification changes are in accordance with 39 U.S.C. 3632–3633 and 39 CFR 3015.2.

I. Domestic Products

A. Express Mail

Overall, the Express Mail price change represents a 4.5 percent increase. The existing structure of zoned Retail, Commercial Base and Commercial Plus price categories is maintained.

Retail prices will increase an average of 4.5 percent. The price for the Retail flat-rate envelope, almost half of all

Express Mail volume, will increase by 4.5 percent to $18.30.

The Commercial Base price category offers lower prices to customers who use online and other authorized postage payment methods. The average price increase for Commercial Base will be the same as Retail, 4.5 percent.

The Commercial Plus price category offers even lower prices to large-volume customers who ship at least 6,000 Express Mail pieces annually. Commercial Plus prices will increase 4.4 percent.

B. Priority Mail

Overall, Priority Mail prices will increase by 3.3 percent. In addition to the existing Retail, Commercial Base, and Commercial Plus price categories, a new price category, Commercial Plus Cubic, is being introduced.

Retail prices will increase an average of 3.9 percent. Flat-rate box prices will be: Small, $4.95; Medium, $10.70; Large, $14.50; and Large APO/FPO, $12.50. The name of the medium-sized box is changed from ''Regular'' to ''Medium.''

The Commercial Base price category offers lower prices to customers using online and other authorized postage payment methods. The average price increase for Commercial Base will be 2.9 percent.

The Commercial Plus price category offers even lower prices to customers who ship more than 100,000 Priority Mail pieces or more than 600 Priority Mail Open and Distribute containers annually. The average price increase for Commercial Plus will be 0.9 percent. Two new innovations in Commercial Plus will be added this year—a half pound price starting at $4.22, and a flat-rate padded envelope priced at $4.95.

The new category, Commercial Plus Cubic, offers attractive prices, based on package size (cubic volume), to customers who ship more than 250,000 Priority Mail pieces annually, for their shipments of smaller, cost-efficient packages that weigh less than 20 pounds which are no larger than ½ cubic foot in volume.

C. Parcel Select

On average, prices for Parcel Select, the Postal Service's bulk ground shipping product, will increase 4.7 percent. For destination entered parcels, the average price increases are 3.9 percent for parcels entered at a destination delivery unit (DDU), 6.9 percent for parcels entered at a destination plant (DSCF) and 6.9 percent for parcels entered at a destination Bulk Mail Center (DBMC). There are no changes to nondestination-entered parcels.

The Loyalty Incentive and Growth Incentive rebates are being eliminated as of the end of May 2010. Also, the 50-piece volume minimum for the Barcoded Nonpresort price category is eliminated for parcels paid using PC Postage.

Non-substantive, editorial changes are also made. Headings separating destination-entered and nondestination-entered categories are added to the list of price categories. The price category list is also modified to conform to the way the price charts are displayed, including elimination of repetitive notes from the price charts.

D. Parcel Return Service

Parcel Return Service prices will have an overall price increase of 3.0 percent. Prices will increase 3.3 percent for parcels picked up at a Bulk Mail Center (RBMC) and 2.1 percent for parcels picked up at a delivery unit (RDU).

E. Premium Forwarding Service

There are no changes.

II. International Products

A. Expedited Services

International expedited services include GXG and Express Mail International (EMI). Overall, GXG prices will rise by 4.1 percent, and EMI will be subject to an overall 2.9 percent increase. The existing structure of both services will remain the same.

B. Priority Mail International

The overall increase for Priority Mail International (PMI) will be 3.0 percent. The existing structure of PMI will remain the same; however, minor edits are made to the Mail Classification Schedule for PMI parcels by creating a single maximum dimension for both rectangular and non-rectangular pieces. Corresponding changes are also made to the classification language for inbound air parcels, as well as PMI parcels entered under customized agreements. In addition, rate group 6 is assigned to Cuba. This corrects the MCS text, since the Postal Service currently offers the full array of outbound letter post, including PMI flat-rate envelope and small flat-rate box, to that destination. The name of the medium-sized flat-rate box is changed from ''Regular'' to ''Medium.''

C. Other

A minor classification change is included in the country schedules in Part D of the MCS. Specifically, rate groups are assigned to Kosovo. These country group assignments correspond to those for Serbia.

Order

The changes in prices and classes set forth herein shall be effective at 12:01 a.m. on January 4, 2010. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2). We also direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

Carolyn Lewis Gallagher

Chairman

BILLING CODE 7710–12–P

MAIL CLASSIFICATION SCHEDULE

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PART B COMPETITIVE PRODUCTS

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2001 COMPETITIVE PRODUCT DESCRIPTIONS

The product descriptions provided in this document include information necessary for maintaining the competitive product list pursuant to the Postal Accountability and Enhancement Act of 2006 (Public Law 109-435). For specific standards relating to postal products and services, including preparation and mailing requirements, please refer to the latest versions of the Domestic Mail Manual and the International Mail Manual, which are published and maintained by the United States Postal Service.

2100 DOMESTIC PRODUCTS

2105 Express Mail

2105.1 Description

a. Express Mail service provides a high speed, high reliability service. It is available from designated acceptance locations to designated postal facilities for delivery to the recipient, or, optionally, pickup by the recipient. Drop-off, pick-up, and delivery times are specified by the Postal Service for particular locations and days of the week. Delivery is either overnight, on the second day, or on the second delivery day (the next delivery day following the second day), for particular locations and days of the week.

b. Any matter eligible for mailing may, at the option of the mailer, be mailed by Express Mail service.

c. Claims for refunds of postage for not meeting applicable standards must be filed within the period of time and under terms and conditions specified in the Domestic Mail Manual.

d. Express Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law.

e. Express Mail pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.

f. Insurance, up to $100.00, is included in Express Mail postage. Additional insurance (Express Mail Insurance) is available for an additional charge, depending on the value and nature of the item sent by Express Mail service.

2105.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			None
Maximum	108 inches in combined length and girth			70 pounds
Flat-Rate Envelope	Nominal Size: 9.5 x 12.5 inches			

2105.3 Minimum Volume Requirements

	Minimum Volume Requirements
Express Mail	None

2105.4 Price Categories

- Retail
  - Zone/Weight – Prices are based on weight and zone
  - Flat-Rate Envelope – Provided or approved by the Postal Service

- Commercial Base – Prices are available to customers who use specifically authorized postage payment methods. (Same definitions as Retail apply to price categories below.)
  - Zone/Weight
  - Flat-Rate Envelope

- Commercial Plus – Prices are available to customers who use specifically authorized postage payment methods and mail over 6,000 pieces annually. (Same definitions as Retail apply to price categories below.)
  - Zone/Weight
  - Flat-Rate Envelope

2105.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand

- Ancillary Services (1505)
  - Address Correction Service (1505.1)
  - Collect On Delivery (1505.7)
  - Express Mail Insurance (1505.9)
  - Return Receipt (1505.13)

2105.6 Prices

Retail Zone/Weight

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
0.5	13.65	15.90	19.35	20.70	21.05	21.85	22.20
1	15.70	20.70	24.70	25.30	25.85	26.20	26.30
2	17.05	21.85	27.15	27.75	28.30	28.50	28.90
3	18.10	23.20	31.20	31.95	32.60	32.80	33.10
4	19.45	24.70	35.30	36.60	36.75	36.90	37.25
5	20.20	26.40	39.30	40.80	40.90	41.10	41.40
6	23.65	31.75	42.95	44.85	44.95	45.15	45.70
7	27.15	37.00	47.00	48.35	49.10	49.40	49.70
8	28.50	38.15	50.60	52.55	53.35	53.60	54.00
9	30.05	39.75	54.15	56.70	57.50	57.70	58.15
10	31.00	41.40	56.65	59.50	60.45	60.65	61.05
11	33.85	46.30	60.55	62.40	63.35	63.55	64.00
12	34.45	49.60	63.75	65.25	66.30	66.40	66.80
13	34.90	52.75	66.70	68.10	69.05	69.90	70.70
14	36.05	56.00	69.35	70.95	71.95	72.90	73.65
15	38.15	59.15	72.30	73.85	74.90	75.65	76.55
16	39.20	62.50	75.10	76.80	78.10	78.20	78.40
17	41.40	65.75	77.95	79.55	80.70	80.90	81.35
18	43.60	68.85	80.70	82.50	83.60	83.85	84.25
19	44.75	72.10	83.50	85.30	86.45	86.65	87.05
20	46.85	75.40	87.60	88.90	89.85	90.35	91.00
21	48.15	80.05	90.35	91.60	93.80	94.15	94.35
22	50.35	83.40	94.35	95.80	96.75	97.05	98.00
23	51.40	86.65	97.15	98.75	99.70	99.95	100.85
24	53.60	89.95	100.25	101.60	102.75	102.85	103.05
25	55.90	93.30	102.65	104.50	105.55	105.80	106.30

Retail Zone/Weight (Continued)

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
26	56.95	96.65	105.65	107.45	108.50	108.80	109.30
27	59.05	99.80	108.40	110.20	111.35	111.70	112.20
28	60.20	103.15	111.90	113.15	114.30	114.60	115.15
29	62.40	106.40	115.55	116.05	117.20	117.55	117.95
30	64.60	109.70	119.20	119.50	120.60	120.95	121.75
31	65.65	112.95	122.80	123.15	124.40	124.70	125.55
32	67.80	116.40	126.45	126.90	128.05	128.35	129.30
33	68.95	119.65	130.10	130.50	131.75	132.05	133.00
34	71.15	122.80	133.85	134.15	135.40	135.70	136.75
35	72.30	126.15	137.40	137.90	139.05	139.50	140.45
36	74.40	129.50	141.10	141.50	142.90	143.20	144.25
37	76.55	132.70	144.75	145.20	146.65	146.95	148.00
38	77.70	136.05	148.40	148.95	150.30	150.60	151.70
39	79.85	139.40	152.10	152.55	153.80	154.20	155.45
40	80.90	142.55	155.80	156.20	157.55	158.00	159.25
41	83.10	145.90	159.45	159.95	161.35	161.60	162.95
42	85.30	149.25	163.05	163.55	165.15	165.35	166.70
43	86.45	152.45	166.70	167.35	168.80	169.10	170.45
44	88.60	155.80	170.35	171.00	172.50	172.80	174.15
45	89.75	159.15	173.95	174.60	176.15	176.45	177.95
46	91.95	162.30	177.75	178.25	179.80	180.15	181.70
47	93.00	165.65	181.40	182.00	183.55	183.85	185.40
48	95.15	169.00	185.00	185.60	187.30	187.60	189.15
49	97.35	172.20	188.65	189.25	191.05	191.25	192.90
50	98.50	175.55	192.40	193.00	194.65	194.95	196.65

Retail Zone/Weight (Continued)

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
51	100.65	178.90	196.00	196.65	198.30	198.65	200.40
52	101.80	182.05	199.65	200.40	202.10	202.40	204.20
53	104.00	185.40	203.30	203.90	205.80	206.00	207.90
54	106.20	188.75	206.95	207.65	209.55	209.75	211.65
55	107.25	193.10	210.70	211.30	213.20	213.45	215.35
56	109.40	196.45	214.30	215.05	216.90	217.10	219.10
57	110.55	199.80	217.95	218.70	220.55	220.90	222.85
58	112.60	202.95	221.60	222.35	224.30	224.50	226.60
59	113.90	206.20	225.20	226.05	228.05	228.25	230.35
60	115.95	209.55	228.90	229.70	231.70	232.00	234.05
61	118.15	212.90	232.65	233.50	235.40	235.70	237.80
62	119.30	216.10	236.25	237.00	239.05	239.40	241.60
63	121.45	219.40	239.90	240.75	242.85	243.05	245.40
64	122.50	222.65	243.55	244.40	246.55	246.75	249.15
65	124.70	225.95	247.15	248.00	250.20	250.50	252.80
66	127.00	229.30	250.95	251.75	253.95	254.25	256.50
67	128.05	232.55	254.60	255.35	257.55	257.90	260.30
68	130.20	235.85	258.20	259.15	261.35	261.65	264.15
69	131.20	239.15	261.85	262.80	265.00	265.25	267.75
70	133.50	242.50	265.55	266.40	268.70	268.90	271.50

Retail Flat-Rate Envelope

	($)
Retail Flat-Rate Envelope, per piece	18.30

Commercial Base Zone/Weight

~~5 percent discount off the retail zone/weight prices~~

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
0.5	12.96	15.09	18.37	19.66	19.96	20.75	21.05
1	14.89	19.66	23.43	24.02	24.53	24.87	24.97
2	16.19	20.75	25.76	26.35	26.86	27.06	27.45
3	17.18	22.04	29.64	30.33	30.92	31.12	31.42
4	18.47	23.43	33.50	34.75	34.89	35.05	35.34
5	19.17	25.07	37.33	38.72	38.82	39.02	39.31
6	22.44	30.13	40.81	42.59	42.69	42.89	43.39
7	25.76	35.14	44.62	45.92	46.61	46.91	47.20
8	27.06	36.24	48.05	49.89	50.68	50.88	51.28
9	28.54	37.72	51.42	53.86	54.60	54.80	55.20
10	29.44	39.31	53.81	56.49	57.38	57.58	57.98
11	32.11	43.98	57.49	59.27	60.16	60.36	60.76
12	32.71	47.11	60.56	61.95	62.94	63.04	63.44
13	33.11	50.09	63.34	64.68	65.57	66.37	67.16
14	34.20	53.16	65.87	67.36	68.35	69.24	69.94
15	36.24	56.19	68.65	70.14	71.13	71.82	72.72
16	37.23	59.37	71.33	72.92	74.16	74.26	74.46
17	39.31	62.45	74.01	75.55	76.64	76.84	77.24
18	41.40	65.38	76.64	78.33	79.42	79.62	80.02
19	42.49	68.45	79.33	81.01	82.11	82.30	82.70
20	44.48	71.62	83.19	84.44	85.32	85.83	86.42
21	45.72	76.04	85.83	87.02	89.10	89.40	89.60
22	47.80	79.22	89.60	90.99	91.88	92.18	93.07
23	48.79	82.30	92.27	93.77	94.71	94.91	95.81
24	50.88	85.43	95.21	96.50	97.59	97.69	97.89
25	53.07	88.61	97.49	99.28	100.27	100.47	100.97

Commercial Base Zone/Weight (Continued)

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
26	54.06	91.78	100.37	102.05	103.05	103.35	103.79
27	56.10	94.81	102.95	104.69	105.77	106.08	106.57
28	57.18	97.99	106.28	107.47	108.55	108.86	109.35
29	59.27	101.06	109.75	110.25	111.33	111.64	112.03
30	61.35	104.19	113.23	113.52	114.56	114.87	115.66
31	62.34	107.27	116.65	116.95	118.14	118.44	119.23
32	64.38	110.54	120.12	120.52	121.62	121.91	122.81
33	65.47	113.62	123.55	123.95	125.14	125.43	126.33
34	67.56	116.65	127.12	127.42	128.61	128.91	129.90
35	68.65	119.83	130.50	130.99	132.09	132.49	133.43
36	70.63	123.01	134.02	134.42	135.71	136.01	137.00
37	72.72	126.03	137.50	137.90	139.29	139.58	140.57
38	73.81	129.20	140.97	141.47	142.76	143.06	144.10
39	75.85	132.38	144.49	144.89	146.08	146.48	147.67
40	76.84	135.41	147.97	148.37	149.65	150.05	151.24
41	78.93	138.59	151.44	151.94	153.28	153.48	154.77
42	81.01	141.76	154.87	155.37	156.85	157.05	158.35
43	82.11	144.80	158.35	158.94	160.33	160.63	161.92
44	84.13	147.97	161.82	162.41	163.86	164.15	165.44
45	85.23	151.15	165.25	165.84	167.33	167.63	169.02
46	87.31	154.18	168.82	169.31	170.81	171.10	172.59
47	88.30	157.36	172.29	172.88	174.33	174.63	176.11
48	90.39	160.53	175.72	176.31	177.90	178.20	179.69
49	92.47	163.55	179.20	179.79	181.47	181.67	183.21
50	93.57	166.73	182.77	183.31	184.90	185.19	186.78

Commercial Base Zone/Weight (Continued)

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
51	95.61	169.91	186.19	186.78	188.37	188.67	190.36
52	96.69	172.94	189.67	190.36	191.95	192.25	193.98
53	98.78	176.11	193.10	193.69	195.48	195.68	197.46
54	100.86	179.29	196.56	197.26	199.05	199.25	201.04
55	101.86	183.41	200.14	200.73	202.52	202.77	204.56
56	103.89	186.58	203.57	204.26	206.04	206.24	208.13
57	104.98	189.76	207.04	207.74	209.52	209.82	211.71
58	106.97	192.79	210.52	211.20	213.04	213.24	215.23
59	108.16	195.87	213.94	214.74	216.62	216.82	218.80
60	110.14	199.05	217.41	218.21	220.10	220.39	222.32
61	112.23	202.23	220.99	221.78	223.62	223.91	225.90
62	113.32	205.25	224.41	225.10	227.09	227.39	229.47
63	115.36	208.43	227.88	228.68	230.66	230.86	233.10
64	116.35	211.51	231.36	232.16	234.19	234.39	236.67
65	118.44	214.63	234.79	235.58	237.66	237.97	240.15
66	120.62	217.81	238.36	239.16	241.24	241.54	243.67
67	121.62	220.89	241.83	242.58	244.67	244.96	247.25
68	123.64	224.02	245.26	246.15	248.24	248.53	250.91
69	124.64	227.19	248.73	249.63	251.71	251.96	254.34
70	126.82	230.37	252.26	253.06	255.24	255.44	257.92

Commercial Base Flat-Rate Envelope

	($)
Commercial Base Flat-Rate Envelope, per piece	17.40

Commercial Plus Zone/Weight

~~14.5 percent discount off the retail zone/weight prices~~

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
0.5	11.66	13.59	16.53	17.69	17.96	18.67	18.95
1	13.41	17.69	21.09	21.62	22.07	22.38	22.47
2	14.57	18.67	23.19	23.72	24.17	24.35	24.70
3	15.46	19.83	26.67	27.30	27.83	28.01	28.28
4	16.62	21.09	30.16	31.28	31.40	31.54	31.81
5	17.24	22.56	33.60	34.85	34.93	35.11	35.38
6	20.19	27.12	36.72	38.33	38.42	38.60	39.04
7	23.19	31.63	40.16	41.32	41.95	42.22	42.49
8	24.35	32.61	43.24	44.89	45.61	45.79	46.15
9	25.69	33.95	46.28	48.47	49.15	49.32	49.68
10	26.49	35.38	48.43	50.84	51.64	51.82	52.18
11	28.90	39.58	51.73	53.34	54.14	54.32	54.68
12	29.44	42.40	54.51	55.75	56.65	56.73	57.09
13	29.79	45.07	57.00	58.21	59.01	59.73	60.44
14	30.78	47.85	59.28	60.62	61.52	62.32	62.94
15	32.61	50.57	61.78	63.13	64.02	64.64	65.45
16	33.50	53.43	64.19	65.63	66.74	66.83	67.02
17	35.38	56.20	66.61	68.00	68.98	69.16	69.51
18	37.25	58.83	68.98	70.50	71.48	71.66	72.01
19	38.24	61.60	71.38	72.91	73.89	74.07	74.42
20	40.02	64.47	74.87	75.99	76.80	77.24	77.78
21	41.14	68.44	77.24	78.31	80.19	80.45	80.63
22	43.02	71.30	80.63	81.89	82.69	82.96	83.77
23	43.91	74.07	83.05	84.38	85.24	85.42	86.22
24	45.79	76.88	85.68	86.85	87.83	87.92	88.09
25	47.76	79.74	87.74	89.35	90.25	90.42	90.86

Commercial Plus Zone/Weight (Continued)

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
26	48.64	82.60	90.33	91.85	92.74	93.02	93.41
27	50.48	85.32	92.65	94.22	95.20	95.47	95.91
28	51.47	88.19	95.65	96.71	97.70	97.97	98.42
29	53.34	90.96	98.77	99.22	100.21	100.47	100.83
30	55.22	93.77	101.90	102.17	103.11	103.37	104.09
31	56.11	96.54	104.98	105.25	106.33	106.59	107.31
32	57.95	99.48	108.12	108.47	109.45	109.71	110.52
33	58.93	102.25	111.19	111.55	112.62	112.89	113.70
34	60.80	104.98	114.41	114.68	115.75	116.02	116.91
35	61.78	107.84	117.45	117.90	118.88	119.23	120.08
36	63.57	110.70	120.62	120.98	122.14	122.41	123.30
37	65.45	113.42	123.75	124.10	125.36	125.62	126.52
38	66.43	116.29	126.87	127.32	128.48	128.75	129.68
39	68.26	119.14	130.05	130.41	131.47	131.84	132.90
40	69.16	121.87	133.17	133.53	134.69	135.05	136.12
41	71.03	124.73	136.30	136.75	137.95	138.13	139.29
42	72.91	127.58	139.38	139.83	141.17	141.35	142.51
43	73.89	130.31	142.51	143.05	144.29	144.57	145.73
44	75.72	133.17	145.64	146.17	147.47	147.73	148.90
45	76.70	136.03	148.71	149.26	150.59	150.87	152.11
46	78.58	138.76	151.93	152.38	153.72	153.99	155.33
47	79.47	141.62	155.07	155.60	156.90	157.16	158.51
48	81.35	144.47	158.15	158.68	160.11	160.38	161.72
49	83.22	147.20	161.27	161.81	163.32	163.51	164.89
50	84.21	150.06	164.49	164.98	166.41	166.68	168.11

Commercial Plus Zone/Weight (Continued)

Weight Not Over (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
51	86.05	152.91	167.58	168.11	169.54	169.80	171.33
52	87.03	155.64	170.70	171.33	172.75	173.02	174.59
53	88.90	158.51	173.78	174.32	175.93	176.10	177.71
54	90.78	161.36	176.91	177.54	179.14	179.32	180.93
55	91.67	165.07	180.13	180.66	182.27	182.49	184.10
56	93.51	167.93	183.21	183.84	185.45	185.62	187.32
57	94.49	170.78	186.33	186.96	188.57	188.83	190.53
58	96.28	173.51	189.46	190.09	191.74	191.91	193.70
59	97.34	176.28	192.54	193.26	194.96	195.13	196.92
60	99.13	179.14	195.68	196.39	198.08	198.35	200.10
61	101.01	182.00	198.88	199.61	201.26	201.53	203.32
62	101.99	184.72	201.97	202.59	204.38	204.65	206.52
63	103.82	187.59	205.10	205.81	207.60	207.78	209.78
64	104.72	190.36	208.23	208.94	210.77	210.95	213.00
65	106.59	193.17	211.31	212.02	213.90	214.16	216.13
66	108.55	196.03	214.53	215.24	217.12	217.38	219.30
67	109.45	198.80	217.65	218.32	220.19	220.46	222.52
68	111.28	201.61	220.74	221.54	223.41	223.68	225.82
69	112.18	204.48	223.86	224.66	226.55	226.77	228.91
70	114.15	207.33	227.04	227.75	229.71	229.89	232.13

Commercial Plus Flat-Rate Envelope

	($)
Commercial Plus Flat-Rate Envelope, per piece	14.96

Pickup On Demand

Add $15.30 for each Pickup On Demand stop.

Sunday/Holiday Delivery

Add $12.50 for requesting Sunday or holiday delivery.

2110 Priority Mail

2110.1 Description

a. Priority Mail service provides expeditious handling and transportation.

b. Any matter eligible for mailing may, at the option of the mailer, be mailed by Priority Mail service for expeditious handling and transportation.

b. Matter containing personal information, partially or wholly handwritten or typewritten matter, or bills or statements of account must be mailed as Priority Mail pieces if they exceed the weight limit set by the Postal Service for First-Class Mail, unless mailed by Express Mail service, exempt under title 39, United States Code, or are otherwise exempted by the Postal Service.

c. Priority Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law.

d. Priority Mail pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.

2110.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			None
Maximum	Commercial Plus Cubic: ½ cubic foot All Other: 108 inches in combined length and girth			Commercial Plus Cubic: 20 pounds All Other: 70 pounds
Flat-Rate Envelopes	Nominal Sizes: REGULAR: 9.5 x 12.5 inches PADDED: 10 x 13 inches			

Flat-Rate Boxes	Nominal Sizes:	
	LARGE:	12.25 x 12.25 x 6.0 inches – approx. 1/2 cu. ft.
	~~REGULAR:~~	
	MEDIUM:	11.875 x 3.375 x 13.625 inches
	or	11 x 8.5 x 5.5 inches – approx. 1/3 cu. ft.
	SMALL:	8.625 x 5.375 x 1.625 inches – approx. 1/20 cu. ft.

2110.3 Minimum Volume Requirements

	Minimum Volume Requirements
Commercial Plus Cubic	50 lbs or 200 pieces
All Other Priority Mail	None

2110.4 Price Categories

The following price categories are available for the product specified in this section:

- Retail
  - Zone/Weight – Prices are based on weight and zone.
  - Flat-Rate Boxes – Provided or approved by the Postal Service.
  - Flat-Rate Envelope – Provided or approved by the Postal Service
  - Balloon Rate – Applies to parcels in zones local through 4. weighing less than 20 pounds and measuring between 84 and 108 inches in combined length and girth.
  - Dimensional Weight – Applies to parcels in zones 5 through 8 that exceed one cubic foot.

- Commercial Base – Prices are available to customers who use specifically authorized postage payment methods. (Same definitions as retail apply to price categories below.)
  - Zone/Weight
  - Flat-Rate Boxes
  - Flat-Rate Envelope
  - Balloon Rate
  - Dimensional Weight

- Commercial Plus – Prices are available to customers who use specifically authorized postage payment methods and whose annual volume exceeds 100,000 pieces or 600 open and distribute containers. (Same definitions as retail apply to price categories below.)
  - Zone/Weight
  - Flat-Rate Boxes
  - Flat-Rate Envelopes

- Balloon Rate
- Dimensional Weight

- Commercial Plus Cubic – Prices are available to customers who use specifically authorized postage payment methods and whose annual Priority Mail volume exceeds 250,000 pieces.
  - Zone/Cubic Volume

2110.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand

- Ancillary Services (1505)
  - Address Correction Service (1505.1)
  - Business Reply Mail (1505.3)
  - Certificate of Mailing (1505.6)
  - Collect On Delivery (1505.7)
  - Delivery Confirmation (1505.8)
  - Insurance (1505.9)
  - Merchandise Return (1505.10)
  - Registered Mail (1505.12)
  - Return Receipt (1505.13)
  - Return Receipt for Merchandise (1505.14)
  - Restricted Delivery (1505.15)
  - Signature Confirmation (1505.17)
  - Special Handling (1505.18)

2110.6 Prices

Retail Priority Mail Zone/Weight

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.90	4.95	5.05	5.15	5.25	5.35	5.55
2	5.00	5.35	5.95	7.50	8.10	8.60	9.55
3	5.70	6.55	7.50	9.00	9.95	10.70	12.70
4	6.45	7.55	8.60	11.90	13.00	13.80	15.30
5	7.65	8.75	9.85	13.50	14.85	15.85	17.65
6	8.30	9.65	11.00	15.05	16.65	17.80	19.90
7	8.95	10.55	11.75	16.80	18.40	20.05	22.40
8	9.60	11.45	13.30	18.20	20.20	22.05	25.10
9	10.25	12.35	14.40	19.75	22.00	23.95	27.95
10	10.90	13.25	15.70	21.35	23.75	26.30	30.40
11	11.70	14.20	16.90	23.05	25.55	29.05	33.35
12	12.50	15.20	18.15	24.70	27.75	31.40	35.85
13	13.25	16.15	19.20	26.15	29.75	32.65	37.10
14	14.05	17.10	20.35	27.80	31.40	34.50	38.95
15	14.65	18.10	21.50	29.40	32.80	35.25	40.05
16	15.10	19.05	22.65	31.00	34.60	37.20	42.30
17	15.65	20.00	23.85	32.65	36.40	39.15	44.55
18	15.95	20.65	25.00	34.25	38.25	41.10	46.80
19	16.45	21.10	25.50	35.15	40.05	43.05	49.00
20	16.85	21.40	25.95	35.75	41.05	44.60	51.25
21	17.35	21.70	26.35	36.35	41.70	45.35	52.40
22	17.75	22.15	26.80	37.15	42.65	46.45	53.70
23	18.15	22.40	27.55	37.80	43.40	47.20	54.65
24	18.60	22.65	28.40	38.60	44.30	48.30	56.00
25	19.00	23.00	29.30	39.25	44.95	49.05	56.95

Retail Priority Mail Zone/Weight (Continued)

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
26	19.40	23.25	30.25	40.05	46.00	50.10	58.75
27	19.95	23.60	31.15	40.60	46.65	50.80	60.95
28	20.55	23.90	32.00	41.10	47.30	51.55	63.20
29	21.20	24.15	32.90	41.65	47.90	52.25	64.90
30	21.85	24.50	33.65	42.25	48.55	53.00	66.35
31	22.40	24.70	34.20	42.80	49.20	53.70	67.70
32	22.70	25.30	34.75	43.30	49.85	55.00	69.05
33	23.00	25.95	35.30	43.85	50.50	56.50	70.35
34	23.25	26.65	35.85	44.80	52.00	58.05	71.65
35	23.55	27.30	36.35	45.75	53.40	59.65	72.90
36	23.80	28.05	36.85	46.75	54.75	61.25	74.15
37	24.05	28.60	37.35	47.60	56.15	62.85	75.35
38	24.30	29.30	37.85	48.55	57.75	64.30	76.55
39	24.55	29.90	38.30	49.55	59.20	65.95	77.70
40	24.80	30.55	38.75	50.55	60.55	67.45	78.80
41	25.05	31.15	39.20	51.05	61.95	68.90	79.90
42	25.25	31.75	39.65	52.10	63.30	69.80	81.00
43	25.50	32.25	40.05	53.30	64.85	70.65	82.05
44	25.70	32.80	40.50	54.45	65.90	71.50	83.05
45	25.90	33.10	40.85	55.65	66.65	72.30	84.05
46	26.10	33.40	41.25	56.70	67.35	73.10	85.05
47	26.30	33.65	41.65	57.95	68.05	73.90	86.00
48	26.50	33.95	42.00	59.10	68.70	74.60	86.90
49	26.70	34.20	42.35	60.20	69.35	75.35	87.80
50	26.85	34.45	42.65	61.35	70.00	76.05	88.70

Retail Priority Mail Zone/Weight (Continued)

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
51	27.00	34.70	43.00	62.40	70.60	76.75	89.50
52	27.25	34.90	43.30	62.90	71.20	77.40	90.35
53	27.75	35.15	43.60	63.40	71.75	78.00	91.15
54	28.10	35.35	43.90	63.90	72.30	78.60	91.90
55	28.60	35.55	44.15	64.35	72.85	79.20	92.65
56	29.00	35.75	44.45	64.80	73.35	79.75	93.35
57	29.45	35.95	44.70	65.20	73.85	80.30	94.05
58	29.85	36.10	44.95	65.60	74.30	80.80	94.75
59	30.35	36.25	45.15	66.00	74.75	81.30	95.45
60	30.70	36.45	45.60	66.35	75.15	81.80	96.15
61	31.20	36.60	46.40	66.70	75.55	82.25	97.45
62	31.55	36.70	47.05	67.00	75.95	82.65	99.00
63	32.10	36.85	47.80	67.35	76.30	83.05	100.55
64	32.45	36.95	48.50	67.65	76.65	83.45	102.10
65	32.90	37.05	49.15	67.90	76.95	83.80	103.70
66	33.30	37.15	49.90	68.15	77.25	84.10	105.20
67	33.80	37.25	50.75	68.40	77.55	84.45	106.85
68	34.20	37.35	51.40	68.60	77.80	84.70	108.35
69	34.65	37.40	52.05	68.80	78.00	85.00	109.95
70	35.05	37.50	52.90	69.00	78.20	85.35	111.50

Retail Pickup On Demand

Add $15.30 for each Pickup On Demand stop.

Retail Flat-Rate Envelope

	($)
Retail Flat-Rate Envelope, per piece	4.90

Retail Flat-Rate Boxes

Size	Delivery to Domestic Address ($)	Delivery to APO/FPO Address ($)
Small Flat-Rate Box	4.95	4.95
~~Regular~~ Medium Flat-Rate Box	10.70	10.70
Large Flat-Rate Box	14.50	12.50

Retail Balloon Rate

In Zones 1-4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Retail Dimensional Weight

In Zones 5-8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 194, and multiplying by an adjustment factor of 0.785.

Commercial Base Priority Mail Zone/Weight

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.80	4.85	4.95	5.05	5.15	5.24	5.44
2	4.90	4.99	5.38	6.82	7.41	7.90	8.82
3	5.08	5.86	6.79	8.19	9.35	10.07	11.74
4	5.72	6.76	7.78	10.14	11.89	12.68	14.14
5	6.67	7.84	8.87	11.76	13.57	14.57	16.37
6	7.35	8.64	9.96	13.40	15.22	16.62	18.71
7	7.94	9.58	11.14	15.23	16.82	18.76	21.04
8	8.51	10.26	12.24	16.70	18.47	20.61	23.63
9	8.89	11.05	13.04	18.00	20.12	22.41	26.30
10	9.55	11.87	14.20	19.50	21.72	24.59	28.59
11	10.37	12.72	15.33	21.05	23.38	26.78	30.93
12	11.08	13.61	16.45	22.56	25.45	28.96	33.22
13	11.75	14.46	17.37	23.79	27.30	30.11	34.36
14	12.46	15.32	18.42	25.29	28.82	31.81	36.08
15	12.99	16.21	19.45	26.75	30.00	32.40	37.01
16	13.39	17.07	20.50	28.20	31.63	34.20	39.09
17	13.87	17.92	21.58	29.70	33.28	36.00	41.16
18	14.14	18.49	22.62	31.16	34.98	37.78	43.24
19	14.58	18.90	23.08	31.98	36.62	39.57	45.27
20	14.94	19.16	23.49	32.52	37.54	41.00	47.37
21	15.38	19.44	23.84	33.06	38.14	41.68	48.42
22	15.73	19.83	24.25	33.79	38.99	42.70	49.63
23	16.08	20.06	24.92	34.39	39.68	43.39	50.50
24	16.49	20.29	25.70	35.11	40.51	44.40	51.75
25	16.84	20.60	26.51	35.71	41.10	45.08	52.63

Commercial Base Priority Mail Zone/Weight (Continued)

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
26	17.19	20.82	27.36	36.44	42.06	46.05	54.28
27	17.68	21.14	28.19	36.94	42.66	46.70	56.33
28	18.22	21.39	28.95	37.40	43.25	47.39	58.40
29	18.80	21.62	29.78	37.90	43.80	48.03	59.97
30	19.37	21.95	30.45	38.43	44.39	48.72	61.30
31	19.86	22.12	30.95	38.94	44.99	49.37	62.55
32	20.13	22.65	31.45	39.39	45.59	50.56	63.81
33	20.39	23.24	31.94	39.90	46.19	51.93	65.00
34	20.61	23.86	32.43	40.75	47.56	53.36	66.20
35	20.87	24.44	32.88	41.62	48.84	54.83	67.36
36	21.10	25.12	33.34	42.53	50.06	56.30	68.52
37	21.31	25.60	33.80	43.30	51.35	57.78	69.63
38	21.54	26.23	34.25	44.16	52.82	59.10	70.73
39	21.76	26.79	34.65	45.08	54.14	60.63	71.81
40	21.98	27.36	35.06	45.99	55.37	62.00	72.81
41	22.20	27.89	35.47	46.43	56.66	63.33	73.83
42	22.39	28.44	35.88	47.39	57.88	64.17	74.85
43	22.60	28.88	36.24	48.49	59.30	64.94	75.82
44	22.78	29.38	36.65	49.53	60.25	65.72	76.74
45	22.95	29.65	36.97	50.62	60.95	66.46	77.66
46	23.13	29.91	37.33	51.57	61.59	67.19	78.59
47	23.31	30.13	37.69	52.73	62.23	67.93	79.46
48	23.48	30.40	38.01	53.76	62.82	68.57	80.30
49	23.67	30.63	38.32	54.75	63.42	69.27	81.12
50	23.79	30.85	38.59	55.81	64.02	69.91	81.96

Commercial Base Priority Mail Zone/Weight (Continued)

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
51	24.14	31.08	38.91	56.77	64.56	70.55	82.70
52	24.46	31.25	39.18	57.21	65.11	71.15	83.49
53	24.92	31.48	39.45	57.67	65.61	71.71	84.23
54	25.25	31.65	39.73	58.13	66.11	72.25	84.92
55	25.67	31.85	39.95	58.53	66.61	72.81	85.61
56	26.04	32.03	40.23	58.95	67.07	73.31	86.34
57	26.45	32.20	40.45	59.30	67.54	73.82	87.11
58	26.83	32.33	40.67	59.67	67.95	74.28	87.82
59	27.24	32.47	40.86	60.04	68.36	74.73	88.44
60	27.56	32.65	41.36	60.36	68.72	75.20	89.11
61	28.02	32.78	42.11	60.68	69.09	75.60	90.31
62	28.35	32.87	42.72	60.95	69.45	75.98	91.74
63	28.81	33.00	43.38	61.27	69.77	76.35	93.17
64	29.13	33.09	44.03	61.54	70.09	76.71	94.64
65	29.55	33.18	44.59	61.76	70.37	77.03	96.12
66	29.92	33.27	45.29	62.00	70.64	77.30	97.51
67	30.34	33.36	46.04	62.22	70.92	77.64	99.04
68	30.71	33.45	46.65	62.40	71.15	77.96	100.42
69	31.13	33.50	47.25	62.59	71.33	78.35	101.90
70	31.49	33.58	48.00	62.77	71.52	78.67	103.33

Commercial Pickup On Demand

Add $15.30 for each Pickup On Demand stop.

Commercial Base Flat-Rate Envelope

	($)
Commercial Base Flat-Rate Envelope, per piece	4.75

Commercial Base Flat-Rate Boxes

Size	Delivery to Domestic Address ($)	Delivery to APO/FPO Address ($)
Small Flat-Rate Box	4.85	4.85
~~Regular~~ Medium Flat-Rate Box	10.20	10.20
Large Flat-Rate Box	13.95	11.95

Commercial Base Balloon Rate

In Zones 1-4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Commercial Base Dimensional Weight

In Zones 5-8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 194, and multiplying by an adjustment factor of 0.785.

Commercial Plus Priority Mail Zone/Weight

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
0.5	4.22	4.27	4.36	4.45	4.53	4.61	4.78
1	4.75	4.80	4.90	5.00	5.10	5.19	5.38
2	4.80	4.85	5.34	6.52	6.95	7.46	8.04
3	4.91	5.65	6.44	7.87	9.21	10.04	11.21
4	5.47	6.45	7.49	9.60	11.19	12.26	13.89
5	6.09	7.36	8.22	11.22	12.97	14.30	16.37
6	6.93	8.53	9.77	13.24	14.53	16.50	18.23
7	7.62	9.46	11.01	15.12	16.16	18.55	20.82
8	8.06	9.82	12.09	16.51	17.53	20.35	23.35
9	8.27	10.51	12.90	17.81	18.97	22.15	25.99
10	8.76	11.32	13.60	18.97	20.55	24.10	28.38
11	9.18	11.60	14.39	19.71	21.82	25.41	29.40
12	9.57	12.19	15.19	20.81	23.52	26.72	30.66
13	9.82	12.49	15.63	21.96	25.23	27.79	31.72
14	10.17	13.04	16.33	22.95	26.58	29.39	33.30
15	10.61	13.62	17.12	23.65	27.19	29.69	34.02
16	10.96	14.08	17.66	24.15	27.79	30.36	34.88
17	11.29	14.56	18.02	24.75	28.54	31.11	35.77
18	11.54	15.01	18.36	25.25	29.10	31.71	36.64
19	11.93	15.35	18.66	25.85	29.78	32.52	37.55
20	12.23	15.59	19.01	26.29	30.35	33.13	38.37
21	12.57	15.80	19.31	26.74	30.85	33.72	39.13
22	12.87	16.09	19.60	27.34	31.54	34.48	40.10
23	13.16	16.29	20.15	27.80	32.10	35.10	40.79
24	13.45	16.49	20.75	28.39	32.75	35.91	41.81
25	13.75	16.74	21.44	28.85	33.26	36.45	42.52

Commercial Plus Priority Mail Zone/Weight (Continued)

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
26	14.04	16.93	22.13	29.44	34.00	37.21	43.88
27	14.43	17.18	22.79	29.85	34.50	37.76	45.51
28	14.89	17.37	23.37	30.24	34.96	38.32	47.19
29	15.32	17.57	24.08	30.64	35.41	38.82	48.70
30	15.81	17.83	24.71	31.08	35.92	39.38	50.33
31	16.21	17.97	25.41	31.44	36.36	39.88	51.99
32	16.64	18.41	26.06	31.84	36.87	40.84	53.62
33	17.09	18.91	26.64	32.24	37.32	42.00	55.19
34	17.53	19.40	27.34	32.93	38.42	43.16	56.81
35	17.97	19.90	27.89	33.63	39.47	44.32	58.44
36	18.41	20.39	28.34	34.38	40.47	45.52	60.06
37	18.86	20.83	28.80	35.03	41.53	46.69	61.68
38	19.10	21.32	29.23	35.72	42.69	47.79	63.30
39	19.33	21.78	29.63	36.43	43.74	49.02	64.97
40	19.70	22.22	30.08	37.18	44.73	50.12	66.49
41	20.11	22.65	30.47	37.52	45.79	51.32	68.11
42	20.48	23.11	30.88	38.32	46.79	52.54	69.74
43	20.89	23.49	31.27	39.17	47.95	53.69	71.37
44	21.26	23.95	31.67	40.07	48.94	54.90	72.98
45	21.62	24.39	32.02	40.92	50.01	56.08	74.60
46	22.03	24.84	32.65	41.71	51.06	57.23	76.22
47	22.41	25.27	33.26	42.61	52.22	58.44	77.79
48	22.82	25.62	34.00	43.45	53.27	59.64	79.18
49	23.19	25.93	34.34	44.26	54.22	60.86	79.98
50	23.50	26.17	34.66	45.11	55.27	62.01	80.98

Commercial Plus Priority Mail Zone/Weight (Continued)

Weight Not Over (pounds)	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
51	23.97	26.42	35.27	46.01	56.32	63.18	81.84
52	24.28	26.66	35.96	46.84	57.48	64.34	82.64
53	24.75	26.91	36.56	47.70	58.49	65.55	83.46
54	25.07	27.10	37.17	48.60	59.49	66.66	84.25
55	25.48	27.35	37.92	49.44	60.54	67.76	84.97
56	25.86	27.55	38.52	50.24	61.69	68.97	85.72
57	26.26	27.80	39.12	51.04	62.70	70.18	86.49
58	26.63	28.00	39.81	51.94	63.75	70.76	87.19
59	27.05	28.19	40.47	52.79	64.40	71.17	87.81
60	27.36	28.39	41.07	53.68	64.76	72.32	88.48
61	27.82	28.58	41.80	54.48	65.52	73.44	89.66
62	28.15	28.84	42.41	55.39	65.93	74.58	91.08
63	28.60	29.27	43.07	56.28	66.31	75.34	92.51
64	28.92	29.45	43.71	57.14	66.73	75.80	93.96
65	29.34	29.53	44.27	57.70	67.06	76.22	95.43
66	29.70	29.87	44.97	57.94	67.48	76.60	96.81
67	30.12	30.28	45.71	58.55	67.81	77.03	98.33
68	30.49	30.65	46.32	59.38	68.09	77.40	99.70
69	30.91	31.07	46.91	60.28	68.47	77.79	101.17
70	31.26	31.43	47.65	60.55	68.75	78.10	102.59

Commercial Pickup On Demand

Add $15.30 for each Pickup On Demand stop.

Commercial Plus Flat-Rate Envelopes

	($)
Commercial Plus Flat-Rate Envelope, per piece	4.70
Commercial Plus Padded Flat-Rate Envelope, per piece	4.95

Commercial Plus Flat-Rate Boxes

Size	Delivery to Domestic Address ($)	Delivery to APO/FPO Address ($)
Small Flat-Rate Box	4.80	4.80
~~Regular~~ Medium Flat-Rate Box	9.77	9.77
Large Flat-Rate Box	13.40	11.40

Commercial Plus Balloon Rate

In Zones 1-4 (including local), parcels weighing less than 20 pounds but measuring more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable price for a 20-pound parcel.

Commercial Plus Dimensional Weight

In Zones 5-8, parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 194.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 194, and multiplying by an adjustment factor of 0.785.

Commercial Plus Cubic

Maximum Cubic Feet	Local, Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
0.10	4.22	4.27	4.36	4.45	4.53	4.61	4.78
0.20	4.85	4.90	5.03	5.19	5.32	5.43	5.65
0.30	4.95	5.31	5.94	7.26	8.11	8.77	9.63
0.40	5.20	6.04	6.93	8.62	10.07	11.00	12.35
0.50	5.87	7.00	7.98	10.55	12.25	13.46	15.33

Commercial Pickup On Demand

Add $15.30 for each Pickup On Demand stop.

2115 Parcel Select

2115.1 Description

a. Any mailable matter may be mailed as Parcel Select mail, except matter required to be mailed by First-Class Mail services or Priority Mail; and publications required to be entered as Periodicals mail.

b. Parcel Select mail is not sealed against postal inspection. Mailing of matter as such constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.

c. Undeliverable-as-addressed Parcel Select pieces will be forwarded on request of the addressee or forwarded or returned on request of the mailer, subject to the applicable Single-Piece Parcel Post price when forwarded or returned from one Post Office location to another. Pieces which combine Parcel Select matter with First-Class Mail or Standard Mail matter will be forwarded or returned if undeliverable-as-addressed, as specified in the Domestic Mail Manual.

d. An annual mailing permit fee is required for destination entered parcels to be paid at each office of mailing or office of verification by or for mailers of Parcel Select (1505.2). Payment of the fee allows the mailer to mail at any Parcel Select price.

e. *Attachments and Enclosures.* First-Class Mail or Standard Mail pieces may be attached to or enclosed in Parcel Select mail.

2115.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			None
Maximum	130 inches in combined length and girth			70 pounds

2115.3 Minimum Volume Requirements

	Minimum Volume Requirements
Barcoded Nonpresort with PC Postage	None
Barcoded Nonpresort – All Other Postage Payment Methods	50 pieces per mailing
All Other Parcel Select	50 pieces per mailing

2115.4 Price Categories

- Destination Entered
  - DDU – Entered at a designated destination delivery unit, or other equivalent facility.
    - Balloon Rate
    - Oversized
    - Loyalty Incentives – Rebates are available on qualified DDU volume to shippers who pay certain minimum levels of total Parcel Select postage and who exceed their previous year's total Parcel Select volume. (Expires May 31, 2010.)
    - Growth Incentives – Rebates are available on qualified incremental DDU volume to shippers who qualify for loyalty incentives, and who maintain certain levels of Parcel Select volume growth rates. (Expires May 31, 2010.)
  - DSCF – Entered at a designated destination processing and distribution center or facility, or other equivalent facility.
    - Machinable
      - 5-Digit
    - Nonmachinable
      - 5-Digit
      - 3-Digit
    - Balloon Rate
    - Oversized
  - DBMC – Entered at a designated destination bulk mail center, auxiliary service facility, or other equivalent facility.
    - Machinable
    - Nonmachinable
    - Balloon Rate
    - Oversized

- Non-Destination Entered
  - OBMC Presort – Entered at the origin bulk mail center.
    - Machinable Barcoded
    - Machinable Nonbarcoded and Nonmachinable
    - Balloon Rate
    - Oversized
  - BMC Presort – Entered at a designated facility.
    - Machinable Barcoded
    - Machinable Nonbarcoded and Nonmachinable
    - Balloon Rate
    - Oversized
  - Barcoded Nonpresort
    - Machinable
    - Balloon Rate

2115.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand

- Ancillary Services (1505)
  - Address Correction Service (1505.1)
  - Certificate of Mailing (1505.6)
  - Collect On Delivery (1505.7)
  - Delivery Confirmation (1505.8)
  - Insurance (1505.9)
  - Return Receipt (1505.13)
  - Return Receipt for Merchandise (1505.14)
  - Restricted Delivery (1505.15)
  - Signature Confirmation (1505.17)
  - Special Handling (1505.18)

2115.6 Prices

Destination Entered

a. DDU and DSCF Entered

Weight Not Over (pounds)	DDU ($)	DSCF 5-Digit ($)	DSCF 3-Digit Nonmachinable ($)
1	1.60	2.31	3.19
2	1.67	2.56	3.44
3	1.75	2.81	3.69
4	1.81	3.03	3.91
5	1.87	3.22	4.10
6	1.93	3.42	4.30
7	2.00	3.62	4.50
8	2.04	3.81	4.69
9	2.10	3.98	4.86
10	2.15	4.13	5.01
11	2.20	4.29	5.17
12	2.24	4.43	5.31
13	2.29	4.60	5.48
14	2.33	4.72	5.60
15	2.38	4.89	5.77
16	2.42	5.06	5.94
17	2.47	5.21	6.09
18	2.51	5.35	6.23
19	2.56	5.50	6.38
20	2.60	5.62	6.50
21	2.65	5.77	6.65
22	2.69	5.93	6.81
23	2.74	6.10	6.98
24	2.78	6.25	7.13
25	2.83	6.35	7.23
26	2.87	6.48	7.36
27	2.92	6.68	7.56
28	2.96	6.80	7.68
29	3.01	6.93	7.81
30	3.05	7.05	7.93
31	3.10	7.23	8.11
32	3.14	7.36	8.24
33	3.19	7.49	8.37
34	3.23	7.67	8.55
35	3.28	7.76	8.64

a. DDU and DSCF Entered (Continued)

Weight Not Over (pounds)	DDU ($)	DSCF 5-Digit ($)	DSCF 3-Digit Nonmachinable ($)
36	3.32	7.91	8.79
37	3.37	8.06	8.94
38	3.41	8.19	9.07
39	3.46	8.35	9.23
40	3.50	8.45	9.33
41	3.55	8.58	9.46
42	3.59	8.71	9.59
43	3.64	8.83	9.71
44	3.68	8.98	9.86
45	3.73	9.10	9.98
46	3.77	9.26	10.14
47	3.82	9.38	10.26
48	3.86	9.50	10.38
49	3.91	9.64	10.52
50	3.95	9.73	10.61
51	4.00	9.90	10.78
52	4.04	10.00	10.88
53	4.09	10.12	11.00
54	4.13	10.27	11.15
55	4.18	10.46	11.34
56	4.22	10.57	11.45
57	4.27	10.73	11.61
58	4.31	10.89	11.77
59	4.36	11.06	11.94
60	4.40	11.19	12.07
61	4.45	11.27	12.15
62	4.49	11.43	12.31
63	4.54	11.58	12.46
64	4.58	11.76	12.64
65	4.63	11.88	12.76
66	4.67	12.01	12.89
67	4.72	12.16	13.04
68	4.76	12.29	13.17
69	4.81	12.45	13.33
70	4.85	12.60	13.48
Oversized	7.62	17.17	17.17

b. DBMC Entered – Machinable

Weight Not Over (pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	2.93	3.45	3.90	5.00
2	3.29	4.22	5.07	5.93
3	3.67	5.03	6.23	6.94
4	4.01	5.76	7.17	7.81
5	4.31	6.43	7.83	8.62
6	4.64	7.08	8.42	9.38
7	4.94	7.71	8.99	10.13
8	5.22	8.27	9.45	10.77
9	5.48	8.79	9.93	11.34
10	5.75	9.34	11.04	11.93
11	5.99	9.87	11.39	12.34
12	6.24	10.34	11.61	12.60
13	6.48	10.78	11.87	12.90
14	6.71	11.13	12.09	13.10
15	6.92	11.48	12.31	13.32
16	7.18	11.75	12.55	13.61
17	7.40	11.94	12.78	13.79
18	7.60	12.16	12.99	14.02
19	7.83	12.40	13.21	14.24
20	8.00	12.58	13.34	14.37
21	8.24	12.82	13.58	14.61
22	8.46	13.06	13.83	14.82
23	8.70	13.33	14.08	15.06
24	8.92	13.56	14.32	15.25
25	9.09	13.74	14.50	15.41
26	9.29	14.00	14.79	15.61
27	9.55	14.29	15.06	15.84
28	9.72	14.51	15.26	16.03
29	9.92	14.72	15.48	16.26
30	10.11	14.96	15.72	16.51
31	10.36	15.23	16.02	16.84
32	10.55	15.48	16.27	17.07
33	10.76	15.70	16.49	17.32
34	11.00	15.91	16.78	17.62
35	11.12	16.08	16.97	17.80

c. DBMC Entered – Nonmachinable

Weight Not Over (pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
1	5.29	5.81	6.26	7.36
2	5.65	6.58	7.43	8.29
3	6.03	7.39	8.59	9.30
4	6.37	8.12	9.53	10.17
5	6.67	8.79	10.19	10.98
6	7.00	9.44	10.78	11.74
7	7.30	10.07	11.35	12.49
8	7.58	10.63	11.81	13.13
9	7.84	11.15	12.29	13.70
10	8.11	11.70	13.40	14.29
11	8.35	12.23	13.75	14.70
12	8.60	12.70	13.97	14.96
13	8.84	13.14	14.23	15.26
14	9.07	13.49	14.45	15.46
15	9.28	13.84	14.67	15.68
16	9.54	14.11	14.91	15.97
17	9.76	14.30	15.14	16.15
18	9.96	14.52	15.35	16.38
19	10.19	14.76	15.57	16.60
20	10.36	14.94	15.70	16.73
21	10.60	15.18	15.94	16.97
22	10.82	15.42	16.19	17.18
23	11.06	15.69	16.44	17.42
24	11.28	15.92	16.68	17.61
25	11.45	16.10	16.86	17.77
26	11.65	16.36	17.15	17.97
27	11.91	16.65	17.42	18.20
28	12.08	16.87	17.62	18.39
29	12.28	17.08	17.84	18.62
30	12.47	17.32	18.08	18.87
31	12.72	17.59	18.38	19.20
32	12.91	17.84	18.63	19.43
33	13.12	18.06	18.85	19.68
34	13.36	18.27	19.14	19.98
35	13.48	18.44	19.33	20.16

c. DBMC Entered – Nonmachinable (Continued)

Weight Not Over (pounds)	Zones 1 & 2	Zone 3	Zone 4	Zone 5
36	13.72	18.65	19.59	20.44
37	13.96	18.87	19.86	20.72
38	14.17	19.10	20.12	21.00
39	14.38	19.33	20.37	21.26
40	14.55	19.52	20.64	21.53
41	14.76	19.79	20.83	21.79
42	14.93	19.94	20.99	22.00
43	15.13	20.14	21.15	22.26
44	15.35	20.40	21.37	22.55
45	15.54	20.58	21.73	22.79
46	15.75	20.85	21.94	23.22
47	15.94	21.04	22.10	23.80
48	16.14	21.30	22.30	24.46
49	16.35	21.55	22.51	25.10
50	16.50	21.68	22.59	25.65
51	16.74	21.89	22.81	26.33
52	16.94	22.19	23.00	27.06
53	17.14	22.39	23.17	27.79
54	17.38	22.58	23.37	28.53
55	17.60	22.77	23.58	28.94
56	17.81	22.96	23.79	29.19
57	18.04	23.09	23.94	29.51
58	18.30	23.34	24.16	29.85
59	18.53	23.50	24.36	30.14
60	18.76	23.64	24.50	30.43
61	18.89	23.79	24.65	30.63
62	19.15	23.99	24.92	30.96
63	19.37	24.15	25.16	31.22
64	19.63	24.34	25.44	31.56
65	19.86	24.51	25.67	31.81
66	20.04	24.72	25.96	32.17
67	20.25	24.85	26.21	32.41
68	20.49	25.05	26.44	32.74
69	20.71	25.20	26.68	32.99
70	20.96	25.41	26.98	33.32
Oversized	26.99	38.10	51.61	53.64

~~*DDU Entered*~~

~~a. Machinable and Nonmachinable DDU~~

~~Maximum Weight (pounds)~~	~~DDU ($)~~	~~Maximum Weight (pounds)~~	~~DDU ($)~~	~~Maximum Weight (pounds)~~	~~DDU ($)~~
~~1~~	~~1.54~~	~~26~~	~~3.04~~	~~51~~	~~3.86~~
~~2~~	~~1.61~~	~~27~~	~~3.08~~	~~52~~	~~3.88~~
~~3~~	~~1.68~~	~~28~~	~~3.13~~	~~53~~	~~3.90~~
~~4~~	~~1.73~~	~~29~~	~~3.18~~	~~54~~	~~3.92~~
~~5~~	~~1.79~~	~~30~~	~~3.22~~	~~55~~	~~3.94~~
~~6~~	~~1.84~~	~~31~~	~~3.25~~	~~56~~	~~3.96~~
~~7~~	~~1.90~~	~~32~~	~~3.29~~	~~57~~	~~3.98~~
~~8~~	~~1.94~~	~~33~~	~~3.33~~	~~58~~	~~3.99~~
~~9~~	~~1.99~~	~~34~~	~~3.36~~	~~59~~	~~4.01~~
~~10~~	~~2.03~~	~~35~~	~~3.41~~	~~60~~	~~4.03~~
~~11~~	~~2.12~~	~~36~~	~~3.44~~	~~61~~	~~4.06~~
~~12~~	~~2.20~~	~~37~~	~~3.47~~	~~62~~	~~4.07~~
~~13~~	~~2.27~~	~~38~~	~~3.50~~	~~63~~	~~4.09~~
~~14~~	~~2.35~~	~~39~~	~~3.53~~	~~64~~	~~4.10~~
~~15~~	~~2.42~~	~~40~~	~~3.56~~	~~65~~	~~4.12~~
~~16~~	~~2.48~~	~~41~~	~~3.59~~	~~66~~	~~4.13~~
~~17~~	~~2.55~~	~~42~~	~~3.63~~	~~67~~	~~4.15~~
~~18~~	~~2.61~~	~~43~~	~~3.66~~	~~68~~	~~4.16~~
~~19~~	~~2.67~~	~~44~~	~~3.68~~	~~69~~	~~4.18~~
~~20~~	~~2.74~~	~~45~~	~~3.71~~	~~70~~	~~4.19~~
~~21~~	~~2.79~~	~~46~~	~~3.73~~	~~Oversized~~	~~7.33~~
~~22~~	~~2.84~~	~~47~~	~~3.76~~		
~~23~~	~~2.89~~	~~48~~	~~3.78~~		
~~24~~	~~2.94~~	~~49~~	~~3.80~~		
~~25~~	~~3.00~~	~~50~~	~~3.84~~		

~~b. Balloon Rate~~

~~Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.~~

~~c. Oversized Price~~

~~Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.~~

~~*DSF and DBMC Entered*~~

~~a. Machinable DSCF and DBMC~~

~~Maximum Weight (pounds)~~	~~DSCF ($)~~	~~DBMC Zones 1 & 2 ($)~~	~~DBMC Zone 3 ($)~~	~~DBMC Zone 4 ($)~~	~~DBMC Zone 5 ($)~~
~~1~~	~~2.16~~	~~2.74~~	~~3.23~~	~~3.65~~	~~4.68~~
~~2~~	~~2.40~~	~~3.08~~	~~3.95~~	~~4.75~~	~~5.56~~
~~3~~	~~2.62~~	~~3.42~~	~~4.69~~	~~5.81~~	~~6.48~~
~~4~~	~~2.81~~	~~3.73~~	~~5.35~~	~~6.66~~	~~7.26~~
~~5~~	~~2.99~~	~~4.01~~	~~5.98~~	~~7.29~~	~~8.02~~
~~6~~	~~3.17~~	~~4.30~~	~~6.56~~	~~7.80~~	~~8.69~~
~~7~~	~~3.34~~	~~4.56~~	~~7.12~~	~~8.30~~	~~9.36~~
~~8~~	~~3.52~~	~~4.83~~	~~7.65~~	~~8.74~~	~~9.96~~
~~9~~	~~3.66~~	~~5.05~~	~~8.10~~	~~9.15~~	~~10.45~~
~~10~~	~~3.79~~	~~5.28~~	~~8.58~~	~~10.14~~	~~10.95~~
~~11~~	~~4.02~~	~~5.62~~	~~9.26~~	~~10.69~~	~~11.58~~
~~12~~	~~4.22~~	~~5.95~~	~~9.86~~	~~11.08~~	~~12.02~~
~~13~~	~~4.43~~	~~6.25~~	~~10.40~~	~~11.45~~	~~12.44~~
~~14~~	~~4.62~~	~~6.57~~	~~10.90~~	~~11.84~~	~~12.82~~
~~15~~	~~4.83~~	~~6.84~~	~~11.35~~	~~12.17~~	~~13.17~~
~~16~~	~~5.03~~	~~7.14~~	~~11.68~~	~~12.48~~	~~13.53~~
~~17~~	~~5.22~~	~~7.42~~	~~11.98~~	~~12.82~~	~~13.84~~
~~18~~	~~5.39~~	~~7.66~~	~~12.26~~	~~13.10~~	~~14.14~~
~~19~~	~~5.57~~	~~7.93~~	~~12.56~~	~~13.38~~	~~14.43~~
~~20~~	~~5.74~~	~~8.17~~	~~12.85~~	~~13.63~~	~~14.68~~
~~21~~	~~5.89~~	~~8.42~~	~~13.11~~	~~13.88~~	~~14.94~~
~~22~~	~~6.06~~	~~8.66~~	~~13.37~~	~~14.15~~	~~15.17~~
~~23~~	~~6.24~~	~~8.91~~	~~13.65~~	~~14.42~~	~~15.42~~
~~24~~	~~6.40~~	~~9.14~~	~~13.90~~	~~14.68~~	~~15.63~~
~~25~~	~~6.53~~	~~9.35~~	~~14.14~~	~~14.92~~	~~15.86~~

~~a. Machinable DSCF and DBMC (Continued)~~

~~Maximum Weight (pounds)~~	~~DSCF ($)~~	~~DBMC Zones 1 & 2 ($)~~	~~DBMC Zone 3 ($)~~	~~DBMC Zone 4 ($)~~	~~DBMC Zone 5 ($)~~
~~26~~	~~6.65~~	~~9.54~~	~~14.37~~	~~15.18~~	~~16.03~~
~~27~~	~~6.83~~	~~9.78~~	~~14.63~~	~~15.42~~	~~16.22~~
~~28~~	~~6.96~~	~~9.96~~	~~14.87~~	~~15.64~~	~~16.43~~
~~29~~	~~7.10~~	~~10.17~~	~~15.10~~	~~15.88~~	~~16.68~~
~~30~~	~~7.21~~	~~10.35~~	~~15.31~~	~~16.09~~	~~16.90~~
~~31~~	~~7.35~~	~~10.55~~	~~15.50~~	~~16.31~~	~~17.14~~
~~32~~	~~7.47~~	~~10.72~~	~~15.73~~	~~16.53~~	~~17.34~~
~~33~~	~~7.59~~	~~10.91~~	~~15.92~~	~~16.72~~	~~17.56~~
~~34~~	~~7.73~~	~~11.10~~	~~16.05~~	~~16.93~~	~~17.77~~
~~35~~	~~7.83~~	~~11.23~~	~~16.24~~	~~17.13~~	~~17.97~~
~~For DSCF and DBMC pieces over 35 pounds, use Nonmachinable prices~~					

~~b. Balloon Rate~~

~~Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.~~

~~c. Nonmachinable DSCF and DBMC~~

~~Maximum Weight (pounds)~~	~~DSCF 5-Digit ($)~~	~~DSCF 3-Digit ($)~~	~~DBMC Zones 1 & 2 ($)~~	~~DBMC Zone 3 ($)~~	~~DBMC Zone 4 ($)~~	~~DBMC Zone 5 ($)~~
~~1~~	~~2.16~~	~~2.98~~	~~4.95~~	~~5.44~~	~~5.86~~	~~6.89~~
~~2~~	~~2.40~~	~~3.22~~	~~5.29~~	~~6.16~~	~~6.96~~	~~7.77~~
~~3~~	~~2.62~~	~~3.44~~	~~5.63~~	~~6.90~~	~~8.02~~	~~8.69~~
~~4~~	~~2.81~~	~~3.63~~	~~5.94~~	~~7.56~~	~~8.87~~	~~9.47~~
~~5~~	~~2.99~~	~~3.81~~	~~6.22~~	~~8.19~~	~~9.50~~	~~10.23~~
~~6~~	~~3.17~~	~~3.99~~	~~6.51~~	~~8.77~~	~~10.01~~	~~10.90~~
~~7~~	~~3.34~~	~~4.16~~	~~6.77~~	~~9.33~~	~~10.51~~	~~11.57~~
~~8~~	~~3.52~~	~~4.34~~	~~7.04~~	~~9.86~~	~~10.95~~	~~12.17~~
~~9~~	~~3.66~~	~~4.48~~	~~7.26~~	~~10.31~~	~~11.36~~	~~12.66~~
~~10~~	~~3.79~~	~~4.61~~	~~7.49~~	~~10.79~~	~~12.35~~	~~13.16~~
~~11~~	~~4.02~~	~~4.84~~	~~7.83~~	~~11.47~~	~~12.90~~	~~13.79~~
~~12~~	~~4.22~~	~~5.04~~	~~8.16~~	~~12.07~~	~~13.29~~	~~14.23~~
~~13~~	~~4.43~~	~~5.25~~	~~8.46~~	~~12.61~~	~~13.66~~	~~14.65~~
~~14~~	~~4.62~~	~~5.44~~	~~8.78~~	~~13.11~~	~~14.05~~	~~15.03~~
~~15~~	~~4.83~~	~~5.65~~	~~9.05~~	~~13.56~~	~~14.38~~	~~15.38~~
~~16~~	~~5.03~~	~~5.85~~	~~9.35~~	~~13.89~~	~~14.69~~	~~15.74~~
~~17~~	~~5.22~~	~~6.04~~	~~9.63~~	~~14.19~~	~~15.03~~	~~16.05~~
~~18~~	~~5.39~~	~~6.21~~	~~9.87~~	~~14.47~~	~~15.31~~	~~16.35~~
~~19~~	~~5.57~~	~~6.39~~	~~10.14~~	~~14.77~~	~~15.59~~	~~16.64~~
~~20~~	~~5.74~~	~~6.56~~	~~10.38~~	~~15.06~~	~~15.84~~	~~16.89~~
~~21~~	~~5.89~~	~~6.71~~	~~10.63~~	~~15.32~~	~~16.09~~	~~17.15~~
~~22~~	~~6.06~~	~~6.88~~	~~10.87~~	~~15.58~~	~~16.36~~	~~17.38~~
~~23~~	~~6.24~~	~~7.06~~	~~11.12~~	~~15.86~~	~~16.63~~	~~17.63~~
~~24~~	~~6.40~~	~~7.22~~	~~11.35~~	~~16.11~~	~~16.89~~	~~17.84~~
~~25~~	~~6.53~~	~~7.35~~	~~11.56~~	~~16.35~~	~~17.13~~	~~18.07~~

~~c. Nonmachinable DSCF and DBMC (Continued)~~

~~Maximum Weight (pounds)~~	~~DSCF 5-Digit ($)~~	~~DSCF 3-Digit ($)~~	~~DBMC Zones 1 & 2 ($)~~	~~DBMC Zone 3 ($)~~	~~DBMC Zone 4 ($)~~	~~DBMC Zone 5 ($)~~
~~26~~	~~6.65~~	~~7.47~~	~~11.75~~	~~16.58~~	~~17.39~~	~~18.24~~
~~27~~	~~6.83~~	~~7.65~~	~~11.99~~	~~16.84~~	~~17.63~~	~~18.43~~
~~28~~	~~6.96~~	~~7.78~~	~~12.17~~	~~17.08~~	~~17.85~~	~~18.64~~
~~29~~	~~7.10~~	~~7.92~~	~~12.38~~	~~17.31~~	~~18.09~~	~~18.89~~
~~30~~	~~7.21~~	~~8.03~~	~~12.56~~	~~17.52~~	~~18.30~~	~~19.11~~
~~31~~	~~7.35~~	~~8.17~~	~~12.76~~	~~17.71~~	~~18.52~~	~~19.35~~
~~32~~	~~7.47~~	~~8.29~~	~~12.93~~	~~17.94~~	~~18.74~~	~~19.55~~
~~33~~	~~7.59~~	~~8.41~~	~~13.12~~	~~18.13~~	~~18.93~~	~~19.77~~
~~34~~	~~7.73~~	~~8.55~~	~~13.31~~	~~18.26~~	~~19.14~~	~~19.98~~
~~35~~	~~7.83~~	~~8.65~~	~~13.44~~	~~18.45~~	~~19.34~~	~~20.18~~
~~36~~	~~7.94~~	~~8.76~~	~~13.63~~	~~18.58~~	~~19.52~~	~~20.38~~
~~37~~	~~8.05~~	~~8.87~~	~~13.81~~	~~18.72~~	~~19.71~~	~~20.57~~
~~38~~	~~8.15~~	~~8.97~~	~~13.97~~	~~18.88~~	~~19.89~~	~~20.77~~
~~39~~	~~8.27~~	~~9.09~~	~~14.13~~	~~19.03~~	~~20.06~~	~~20.95~~
~~40~~	~~8.33~~	~~9.15~~	~~14.24~~	~~19.15~~	~~20.25~~	~~21.13~~
~~41~~	~~8.42~~	~~9.24~~	~~14.40~~	~~19.34~~	~~20.36~~	~~21.31~~
~~42~~	~~8.54~~	~~9.36~~	~~14.55~~	~~19.46~~	~~20.49~~	~~21.48~~
~~43~~	~~8.62~~	~~9.44~~	~~14.69~~	~~19.59~~	~~20.57~~	~~21.66~~
~~44~~	~~8.71~~	~~9.53~~	~~14.82~~	~~19.72~~	~~20.67~~	~~21.81~~
~~45~~	~~8.79~~	~~9.61~~	~~14.96~~	~~19.83~~	~~20.94~~	~~21.97~~
~~46~~	~~8.89~~	~~9.71~~	~~15.08~~	~~19.98~~	~~21.02~~	~~22.25~~
~~47~~	~~8.97~~	~~9.79~~	~~15.21~~	~~20.09~~	~~21.11~~	~~22.73~~
~~48~~	~~9.03~~	~~9.85~~	~~15.32~~	~~20.23~~	~~21.18~~	~~23.23~~
~~49~~	~~9.11~~	~~9.93~~	~~15.44~~	~~20.35~~	~~21.26~~	~~23.71~~
~~50~~	~~9.18~~	~~10.00~~	~~15.57~~	~~20.46~~	~~21.32~~	~~24.21~~

~~c. Nonmachinable DSCF and DBMC (Continued)~~

~~Maximum Weight (pounds)~~	~~DSCF 5-Digit ($)~~	~~DSCF 3-Digit ($)~~	~~DBMC Zones 1 & 2 ($)~~	~~DBMC Zone 3 ($)~~	~~DBMC Zone 4 ($)~~	~~DBMC Zone 5 ($)~~
~~51~~	~~9.29~~	~~10.11~~	~~15.71~~	~~20.55~~	~~21.41~~	~~24.72~~
~~52~~	~~9.33~~	~~10.15~~	~~15.82~~	~~20.72~~	~~21.48~~	~~25.27~~
~~53~~	~~9.38~~	~~10.20~~	~~15.93~~	~~20.80~~	~~21.52~~	~~25.81~~
~~54~~	~~9.47~~	~~10.29~~	~~16.07~~	~~20.87~~	~~21.60~~	~~26.36~~
~~55~~	~~9.59~~	~~10.41~~	~~16.20~~	~~20.94~~	~~21.68~~	~~26.60~~
~~56~~	~~9.64~~	~~10.46~~	~~16.31~~	~~21.01~~	~~21.77~~	~~26.70~~
~~57~~	~~9.73~~	~~10.55~~	~~16.44~~	~~21.03~~	~~21.80~~	~~26.86~~
~~58~~	~~9.80~~	~~10.62~~	~~16.57~~	~~21.11~~	~~21.85~~	~~26.97~~
~~59~~	~~9.90~~	~~10.72~~	~~16.70~~	~~21.15~~	~~21.92~~	~~27.10~~
~~60~~	~~9.97~~	~~10.79~~	~~16.83~~	~~21.18~~	~~21.95~~	~~27.23~~
~~61~~	~~10.01~~	~~10.83~~	~~16.91~~	~~21.26~~	~~22.03~~	~~27.34~~
~~62~~	~~10.08~~	~~10.90~~	~~17.03~~	~~21.30~~	~~22.12~~	~~27.45~~
~~63~~	~~10.16~~	~~10.98~~	~~17.15~~	~~21.34~~	~~22.23~~	~~27.55~~
~~64~~	~~10.24~~	~~11.06~~	~~17.27~~	~~21.37~~	~~22.33~~	~~27.67~~
~~65~~	~~10.30~~	~~11.12~~	~~17.39~~	~~21.43~~	~~22.43~~	~~27.76~~
~~66~~	~~10.34~~	~~11.16~~	~~17.44~~	~~21.47~~	~~22.54~~	~~27.89~~
~~67~~	~~10.42~~	~~11.24~~	~~17.55~~	~~21.50~~	~~22.66~~	~~27.98~~
~~68~~	~~10.46~~	~~11.28~~	~~17.65~~	~~21.53~~	~~22.72~~	~~28.08~~
~~69~~	~~10.55~~	~~11.37~~	~~17.77~~	~~21.57~~	~~22.83~~	~~28.18~~
~~70~~	~~10.60~~	~~11.42~~	~~17.87~~	~~21.62~~	~~22.94~~	~~28.28~~
~~Oversized~~	~~16.04~~	~~16.04~~	~~25.23~~	~~35.62~~	~~48.25~~	~~50.15~~

d. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to ~~a~~ the otherwise applicable price ~~equal to that~~ for a 20-pound parcel ~~for the zone to which the parcel is addressed~~.

e. Oversized Price

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.

f. Loyalty Incentives (Expires May 31, 2010.)

Annual total Parcel Select postage	$5M	$25M	$50M	$100M	$300M	$500M
Rebate on qualified DDU volume	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%

g. Growth Incentives (Expires May 31, 2010.)

Total Parcel Select postage to qualify	$5M	$25M	$50M	$100M	$300M	$500M
Total Parcel Select annual growth rate	Rebate on qualified incremental DDU volume					
>10%	2%	4%	6%	8%	10%	10%
>20%	4%	6%	8%	10%	12%	12%
>30%	6%	8%	10%	12%	14%	14%

~~*BMC Presort Entered*~~

Non-Destination Entered

a. OBMC Presort Machinable Barcoded

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	3.72	3.72	3.72	3.72	3.72	3.72	3.72
2	3.72	3.97	4.52	5.84	6.15	6.44	6.91
3	4.27	5.02	5.87	7.00	7.67	8.09	8.74
4	4.87	5.87	6.76	8.02	8.87	9.48	10.39
5	5.62	6.92	7.84	8.87	9.60	10.19	11.16
6	6.32	8.02	8.76	9.76	10.27	10.84	11.85
7	7.07	8.82	9.31	10.62	11.18	11.83	12.97
8	7.38	9.16	9.68	10.99	11.78	12.56	13.85
9	7.69	9.51	10.06	11.37	12.38	13.29	14.72
10	8.00	9.85	10.43	11.74	12.98	14.03	15.59
11	8.31	10.20	10.81	12.11	13.58	14.76	16.47
12	8.62	10.54	11.18	12.48	14.18	15.49	17.34
13	8.93	10.88	11.56	12.85	14.78	16.22	18.21
14	9.24	11.23	11.93	13.22	15.38	16.95	19.09
15	9.55	11.57	12.31	13.59	15.98	17.68	19.96
16	9.86	11.92	12.69	13.96	16.58	18.41	20.83
17	10.16	12.26	13.06	14.33	17.18	19.15	21.71
18	10.47	12.61	13.42	14.81	17.78	19.88	22.58
19	10.78	12.95	13.77	15.29	18.38	20.61	23.46
20	11.09	13.30	14.12	15.76	18.98	21.34	24.33
21	11.40	13.64	14.48	16.24	19.58	22.07	25.20
22	11.71	13.99	14.83	16.71	20.18	22.80	26.08
23	12.02	14.33	15.19	17.19	20.78	23.53	26.95
24	12.33	14.68	15.54	17.66	21.38	24.27	27.82
25	12.64	15.02	15.89	18.14	21.98	25.00	28.70
26	12.95	15.37	16.25	18.62	22.58	25.73	29.57
27	13.26	15.71	16.60	19.09	23.18	26.46	30.45
28	13.57	16.06	16.96	19.57	23.78	27.19	31.32
29	13.88	16.40	17.31	20.04	24.38	27.92	32.19
30	14.19	16.75	17.67	20.52	24.98	28.65	33.07
31	14.50	17.09	18.02	20.99	25.58	29.39	33.94
32	14.81	17.44	18.37	21.47	26.19	30.12	34.81
33	15.12	17.78	18.73	21.95	26.79	30.85	35.69
34	15.43	18.13	19.08	22.42	27.39	31.58	36.56
35	15.74	18.47	19.44	22.90	27.99	32.31	37.43

~~FOR OBMC PRESORT PIECES OVER 35 POUNDS,~~
~~USE MACHINABLE NONBARCODED AND NONMACHINABLE PRICES~~

~~b. Balloon Rate~~

~~Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.~~

~~c.~~ b. OBMC Presort Machinable Nonbarcoded and Nonmachinable

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	3.75	3.75	3.75	3.75	3.75	3.75	3.75
2	3.75	4.00	4.55	5.87	6.18	6.47	6.94
3	4.30	5.05	5.90	7.03	7.70	8.12	8.77
4	4.90	5.90	6.79	8.05	8.90	9.51	10.42
5	5.65	6.95	7.87	8.90	9.63	10.22	11.19
6	6.35	8.05	8.79	9.79	10.30	10.87	11.88
7	7.10	8.85	9.34	10.65	11.21	11.86	13.00
8	7.41	9.19	9.71	11.02	11.81	12.59	13.88
9	7.72	9.54	10.09	11.40	12.41	13.32	14.75
10	8.03	9.88	10.46	11.77	13.01	14.06	15.62
11	8.34	10.23	10.84	12.14	13.61	14.79	16.50
12	8.65	10.57	11.21	12.51	14.21	15.52	17.37
13	8.96	10.91	11.59	12.88	14.81	16.25	18.24
14	9.27	11.26	11.96	13.25	15.41	16.98	19.12
15	9.58	11.60	12.34	13.62	16.01	17.71	19.99
16	9.89	11.95	12.72	13.99	16.61	18.44	20.86
17	10.19	12.29	13.09	14.36	17.21	19.18	21.74
18	10.50	12.64	13.45	14.84	17.81	19.91	22.61
19	10.81	12.98	13.80	15.32	18.41	20.64	23.49
20	11.12	13.33	14.15	15.79	19.01	21.37	24.36
21	11.43	13.67	14.51	16.27	19.61	22.10	25.23
22	11.74	14.02	14.86	16.74	20.21	22.83	26.11
23	12.05	14.36	15.22	17.22	20.81	23.56	26.98
24	12.36	14.71	15.57	17.69	21.41	24.30	27.85
25	12.67	15.05	15.92	18.17	22.01	25.03	28.73
26	12.98	15.40	16.28	18.65	22.61	25.76	29.60
27	13.29	15.74	16.63	19.12	23.21	26.49	30.48
28	13.60	16.09	16.99	19.60	23.81	27.22	31.35
29	13.91	16.43	17.34	20.07	24.41	27.95	32.22
30	14.22	16.78	17.70	20.55	25.01	28.68	33.10
31	14.53	17.12	18.05	21.02	25.61	29.42	33.97
32	14.84	17.47	18.40	21.50	26.22	30.15	34.84
33	15.15	17.81	18.76	21.98	26.82	30.88	35.72
34	15.46	18.16	19.11	22.45	27.42	31.61	36.59
35	15.77	18.50	19.47	22.93	28.02	32.34	37.46
36	15.92	18.85	19.82	23.40	28.62	33.07	38.34
37	16.08	19.19	20.18	23.88	29.22	33.80	39.21
38	16.24	19.53	20.53	24.35	29.82	34.54	40.09

~~c.~~ b. OBMC Presort Machinable Nonbarcoded and Nonmachinable (Continued)

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
39	16.39	19.88	20.88	24.83	30.42	35.27	40.96
40	16.55	20.22	21.24	25.31	31.02	36.00	41.83
41	16.70	20.57	21.59	25.78	31.62	36.73	42.71
42	16.86	20.91	21.95	26.26	32.22	37.46	43.58
43	17.02	21.08	22.30	26.73	32.82	38.19	44.45
44	17.17	21.25	22.66	27.21	33.42	38.92	45.33
45	17.33	21.42	23.01	27.68	34.02	39.66	46.20
46	17.49	21.59	23.36	28.16	34.62	40.39	47.08
47	17.64	21.76	23.72	28.64	35.22	41.12	47.95
48	17.80	21.93	24.07	29.11	35.82	41.85	48.82
49	17.96	22.10	24.43	29.59	36.42	42.58	49.70
50	18.11	22.27	24.78	30.06	37.02	43.31	50.57
51	18.27	22.44	25.14	30.54	37.62	44.04	51.44
52	18.43	22.61	25.49	31.01	38.22	44.78	52.32
53	18.58	22.78	25.84	31.49	38.82	45.51	53.19
54	18.74	22.95	26.20	31.97	39.42	46.24	54.06
55	18.90	23.12	26.55	32.44	40.02	46.97	54.94
56	19.05	23.29	26.91	32.92	40.62	47.70	55.81
57	19.21	23.46	27.26	33.39	41.22	48.43	56.69
58	19.36	23.63	27.62	33.87	41.82	49.16	57.56
59	19.52	23.80	27.97	34.35	42.42	49.90	58.43
60	19.68	23.97	28.32	34.82	43.02	50.63	59.31
61	19.83	24.14	28.68	35.30	43.62	51.36	60.18
62	19.99	24.31	29.03	35.77	44.22	52.09	61.05
63	20.15	24.48	29.39	36.25	44.82	52.82	61.93
64	20.30	24.65	29.74	36.72	45.42	53.55	62.80
65	20.46	24.82	30.09	37.20	46.02	54.28	63.68
66	20.62	24.99	30.45	37.68	46.62	55.02	64.55
67	20.77	25.16	30.80	38.15	47.22	55.75	65.42
68	20.93	25.33	31.16	38.63	47.82	56.48	66.30
69	21.09	25.50	31.51	39.10	48.42	57.21	67.17
70	21.24	25.67	31.87	39.58	49.02	57.94	68.04
Oversized	60.65	63.50	64.79	66.74	89.77	95.67	106.01

~~d. Balloon Rate~~

~~Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.~~

~~e. Oversized Price~~

~~Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.~~

~~*BMC Presort Entered*~~

~~a.~~ c. BMC Presort Machinable Barcoded

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.64	4.64	4.64	4.64	4.64	4.64	4.64
2	4.64	4.89	5.44	6.76	7.07	7.36	7.83
3	5.19	5.94	6.79	7.92	8.59	9.01	9.66
4	5.79	6.79	7.68	8.94	9.79	10.40	11.31
5	6.54	7.84	8.76	9.79	10.52	11.11	12.08
6	7.24	8.94	9.68	10.68	11.19	11.76	12.77
7	7.99	9.74	10.23	11.54	12.10	12.75	13.89
8	8.30	10.08	10.60	11.91	12.70	13.48	14.77
9	8.61	10.43	10.98	12.29	13.30	14.21	15.64
10	8.92	10.77	11.35	12.66	13.90	14.95	16.51
11	9.23	11.12	11.73	13.03	14.50	15.68	17.39
12	9.54	11.46	12.10	13.40	15.10	16.41	18.26
13	9.85	11.80	12.48	13.77	15.70	17.14	19.13
14	10.16	12.15	12.85	14.14	16.30	17.87	20.01
15	10.47	12.49	13.23	14.51	16.90	18.60	20.88
16	10.78	12.84	13.61	14.88	17.50	19.33	21.75
17	11.08	13.18	13.98	15.25	18.10	20.07	22.63
18	11.39	13.53	14.34	15.73	18.70	20.80	23.50
19	11.70	13.87	14.69	16.21	19.30	21.53	24.38
20	12.01	14.22	15.04	16.68	19.90	22.26	25.25
21	12.32	14.56	15.40	17.16	20.50	22.99	26.12
22	12.63	14.91	15.75	17.63	21.10	23.72	27.00
23	12.94	15.25	16.11	18.11	21.70	24.45	27.87
24	13.25	15.60	16.46	18.58	22.30	25.19	28.74
25	13.56	15.94	16.81	19.06	22.90	25.92	29.62
26	13.87	16.29	17.17	19.54	23.50	26.65	30.49
27	14.18	16.63	17.52	20.01	24.10	27.38	31.37
28	14.49	16.98	17.88	20.49	24.70	28.11	32.24
29	14.80	17.32	18.23	20.96	25.30	28.84	33.11
30	15.11	17.67	18.59	21.44	25.90	29.57	33.99
31	15.42	18.01	18.94	21.91	26.50	30.31	34.86
32	15.73	18.36	19.29	22.39	27.11	31.04	35.73
33	16.04	18.70	19.65	22.87	27.71	31.77	36.61
34	16.35	19.05	20.00	23.34	28.31	32.50	37.48
35	16.66	19.39	20.36	23.82	28.91	33.23	38.35

~~For BMC Presort pieces over 35 pounds, use Machinable Nonbarcoded and Nonmachinable prices~~

~~b. Balloon Rate~~

~~Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.~~

~~c.~~ d. BMC Presort Machinable Nonbarcoded and Nonmachinable

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.67	4.67	4.67	4.67	4.67	4.67	4.67
2	4.67	4.92	5.47	6.79	7.10	7.39	7.86
3	5.22	5.97	6.82	7.95	8.62	9.04	9.69
4	5.82	6.82	7.71	8.97	9.82	10.43	11.34
5	6.57	7.87	8.79	9.82	10.55	11.14	12.11
6	7.27	8.97	9.71	10.71	11.22	11.79	12.80
7	8.02	9.77	10.26	11.57	12.13	12.78	13.92
8	8.33	10.11	10.63	11.94	12.73	13.51	14.80
9	8.64	10.46	11.01	12.32	13.33	14.24	15.67
10	8.95	10.80	11.38	12.69	13.93	14.98	16.54
11	9.26	11.15	11.76	13.06	14.53	15.71	17.42
12	9.57	11.49	12.13	13.43	15.13	16.44	18.29
13	9.88	11.83	12.51	13.80	15.73	17.17	19.16
14	10.19	12.18	12.88	14.17	16.33	17.90	20.04
15	10.50	12.52	13.26	14.54	16.93	18.63	20.91
16	10.81	12.87	13.64	14.91	17.53	19.36	21.78
17	11.11	13.21	14.01	15.28	18.13	20.10	22.66
18	11.42	13.56	14.37	15.76	18.73	20.83	23.53
19	11.73	13.90	14.72	16.24	19.33	21.56	24.41
20	12.04	14.25	15.07	16.71	19.93	22.29	25.28
21	12.35	14.59	15.43	17.19	20.53	23.02	26.15
22	12.66	14.94	15.78	17.66	21.13	23.75	27.03
23	12.97	15.28	16.14	18.14	21.73	24.48	27.90
24	13.28	15.63	16.49	18.61	22.33	25.22	28.77
25	13.59	15.97	16.84	19.09	22.93	25.95	29.65
26	13.90	16.32	17.20	19.57	23.53	26.68	30.52
27	14.21	16.66	17.55	20.04	24.13	27.41	31.40
28	14.52	17.01	17.91	20.52	24.73	28.14	32.27
29	14.83	17.35	18.26	20.99	25.33	28.87	33.14
30	15.14	17.70	18.62	21.47	25.93	29.60	34.02
31	15.45	18.04	18.97	21.94	26.53	30.34	34.89
32	15.76	18.39	19.32	22.42	27.14	31.07	35.76
33	16.07	18.73	19.68	22.90	27.74	31.80	36.64
34	16.38	19.08	20.03	23.37	28.34	32.53	37.51
35	16.69	19.42	20.39	23.85	28.94	33.26	38.38
36	16.84	19.77	20.74	24.32	29.54	33.99	39.26
37	17.00	20.11	21.10	24.80	30.14	34.72	40.13
38	17.16	20.45	21.45	25.27	30.74	35.46	41.01
39	17.31	20.80	21.80	25.75	31.34	36.19	41.88

~~c.~~ d. BMC Presort Machinable Nonbarcoded and Nonmachinable (Continued)

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
40	17.47	21.14	22.16	26.23	31.94	36.92	42.75
41	17.62	21.49	22.51	26.70	32.54	37.65	43.63
42	17.78	21.83	22.87	27.18	33.14	38.38	44.50
43	17.94	22.00	23.22	27.65	33.74	39.11	45.37
44	18.09	22.17	23.58	28.13	34.34	39.84	46.25
45	18.25	22.34	23.93	28.60	34.94	40.58	47.12
46	18.41	22.51	24.28	29.08	35.54	41.31	48.00
47	18.56	22.68	24.64	29.56	36.14	42.04	48.87
48	18.72	22.85	24.99	30.03	36.74	42.77	49.74
49	18.88	23.02	25.35	30.51	37.34	43.50	50.62
50	19.03	23.19	25.70	30.98	37.94	44.23	51.49
51	19.19	23.36	26.06	31.46	38.54	44.96	52.36
52	19.35	23.53	26.41	31.93	39.14	45.70	53.24
53	19.50	23.70	26.76	32.41	39.74	46.43	54.11
54	19.66	23.87	27.12	32.89	40.34	47.16	54.98
55	19.82	24.04	27.47	33.36	40.94	47.89	55.86
56	19.97	24.21	27.83	33.84	41.54	48.62	56.73
57	20.13	24.38	28.18	34.31	42.14	49.35	57.61
58	20.28	24.55	28.54	34.79	42.74	50.08	58.48
59	20.44	24.72	28.89	35.27	43.34	50.82	59.35
60	20.60	24.89	29.24	35.74	43.94	51.55	60.23
61	20.75	25.06	29.60	36.22	44.54	52.28	61.10
62	20.91	25.23	29.95	36.69	45.14	53.01	61.97
63	21.07	25.40	30.31	37.17	45.74	53.74	62.85
64	21.22	25.57	30.66	37.64	46.34	54.47	63.72
65	21.38	25.74	31.01	38.12	46.94	55.20	64.60
66	21.54	25.91	31.37	38.60	47.54	55.94	65.47
67	21.69	26.08	31.72	39.07	48.14	56.67	66.34
68	21.85	26.25	32.08	39.55	48.74	57.40	67.22
69	22.01	26.42	32.43	40.02	49.34	58.13	68.09
70	22.16	26.59	32.79	40.50	49.94	58.86	68.96
Oversized	61.57	64.42	65.71	67.66	90.69	96.59	106.93

~~d. Balloon Rate~~

~~Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.~~

~~e. Oversized Price~~

~~Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.~~

e. Barcoded Nonpresort

Weight Not Over (Pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	4.87	4.87	4.87	4.87	4.87	4.87	4.87
2	4.87	5.12	5.67	6.99	7.30	7.59	8.06
3	5.42	6.17	7.02	8.15	8.82	9.24	9.89
4	6.02	7.02	7.91	9.17	10.02	10.63	11.54
5	6.77	8.07	8.99	10.02	10.75	11.34	12.31
6	7.47	9.17	9.91	10.91	11.42	11.99	13.00
7	8.22	9.97	10.46	11.77	12.33	12.98	14.12
8	8.53	10.31	10.83	12.14	12.93	13.71	15.00
9	8.84	10.66	11.21	12.52	13.53	14.44	15.87
10	9.15	11.00	11.58	12.89	14.13	15.18	16.74
11	9.46	11.35	11.96	13.26	14.73	15.91	17.62
12	9.77	11.69	12.33	13.63	15.33	16.64	18.49
13	10.08	12.03	12.71	14.00	15.93	17.37	19.36
14	10.39	12.38	13.08	14.37	16.53	18.10	20.24
15	10.70	12.72	13.46	14.74	17.13	18.83	21.11
16	11.01	13.07	13.84	15.11	17.73	19.56	21.98
17	11.31	13.41	14.21	15.48	18.33	20.30	22.86
18	11.62	13.76	14.57	15.96	18.93	21.03	23.73
19	11.93	14.10	14.92	16.44	19.53	21.76	24.61
20	12.24	14.45	15.27	16.91	20.13	22.49	25.48
21	12.55	14.79	15.63	17.39	20.73	23.22	26.35
22	12.86	15.14	15.98	17.86	21.33	23.95	27.23
23	13.17	15.48	16.34	18.34	21.93	24.68	28.10
24	13.48	15.83	16.69	18.81	22.53	25.42	28.97
25	13.79	16.17	17.04	19.29	23.13	26.15	29.85
26	14.10	16.52	17.40	19.77	23.73	26.88	30.72
27	14.41	16.86	17.75	20.24	24.33	27.61	31.60
28	14.72	17.21	18.11	20.72	24.93	28.34	32.47
29	15.03	17.55	18.46	21.19	25.53	29.07	33.34
30	15.34	17.90	18.82	21.67	26.13	29.80	34.22
31	15.65	18.24	19.17	22.14	26.73	30.54	35.09
32	15.96	18.59	19.52	22.62	27.34	31.27	35.96
33	16.27	18.93	19.88	23.10	27.94	32.00	36.84
34	16.58	19.28	20.23	23.57	28.54	32.73	37.71
35	16.89	19.62	20.59	24.05	29.14	33.46	38.58

f. Balloon Rate

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

g. Oversized Price

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.

2120 Parcel Return Service

2120.1 Description

a. Parcel Return Service mail consists of returned merchandise meeting preparation and entry requirements, which is retrieved in bulk at designated facilities, with postage paid by the addressee.

b. Any mailable matter may be mailed as Parcel Return Service mail, except matter required to be mailed by First-Class Mail or Priority Mail services; and publications required to be entered as Periodicals mail.

c. Parcel Return Service mail is not sealed against postal inspection. Mailing of matter as such constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.

d. Undeliverable-as-addressed Parcel Return Service pieces will be forwarded on request of the addressee or forwarded or returned on request of the mailer, subject to the applicable Single-Piece Parcel Post price when forwarded or returned from one Post Office location to another. Pieces which combine Parcel Return Service matter with First-Class Mail or Standard Mail matter will be forwarded or returned if undeliverable-as-addressed, as specified in the Domestic Mail Manual.

e. Payment of an annual mailing permit fee and an account maintenance fee are required for Parcel Return Service (1505.2).

f. *Attachments and* Enclosures. First-Class Mail or Standard Mail pieces may be attached to or enclosed in Parcel Return Service mail. Additional postage may be required. Parcel Return Service mail may have limited written additions placed on the wrapper, on a tag or label attached to the outside of the parcel, or inside the parcel, either loose or attached to the article.

2120.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			None
Maximum	130 inches in combined length and girth			70 pounds

2120.3 Minimum Volume Requirements

	Minimum Volume Requirements
Parcel Return Service	None

2120.4 Price Categories

- RBMC (Contains merchandise and is retrieved in bulk at a bulk mail center, or other equivalent facility.)
  - Machinable
  - Nonmachinable
  - Balloon Rate
  - Oversized
- RDU (Contains merchandise and is retrieved in bulk at a designated destination delivery unit, or other equivalent facility.)
  - Machinable
  - Nonmachinable
  - Oversized

2120.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Ancillary Services (1505)
  - Certificate of Mailing (1505.6)

2120.6 Prices

RBMC Entered

a. Machinable RBMC

Maximum Weight (pounds)	RBMC Zones 1 & 2 ($)	RBMC Zone 3 ($)	RBMC Zone 4 ($)	RBMC Zone 5 ($)
1	2.63	2.77	2.85	3.08
2	3.54	3.60	3.71	4.02
3	4.31	4.36	4.50	4.92
4	4.81	5.06	5.20	5.75
5	5.27	5.67	5.85	6.52
6	5.69	6.24	6.41	7.21
7	6.05	6.74	6.95	7.86
8	6.75	7.22	7.43	8.46
9	7.11	7.66	7.93	9.01
10	7.41	8.12	8.69	9.53
11	7.60	8.51	9.09	9.99
12	7.83	8.89	9.49	10.45
13	8.05	9.23	9.86	10.87
14	8.24	9.54	10.27	11.25
15	8.39	9.87	10.58	11.61
16	8.57	10.20	10.90	11.98
17	8.78	10.51	11.25	12.28
18	8.92	10.80	11.53	12.59
19	9.11	11.10	11.82	12.88
20	9.25	11.33	12.06	13.14
21	9.40	11.55	12.32	13.39
22	9.57	11.74	12.60	13.63
23	9.70	12.00	12.87	13.89
24	9.82	12.16	13.14	14.10
25	9.95	12.37	13.38	14.32

a. Machinable RBMC (Continued)

Maximum Weight (pounds)	RBMC Zones 1 & 2 ($)	RBMC Zone 3 ($)	RBMC Zone 4 ($)	RBMC Zone 5 ($)
26	10.10	12.54	13.64	14.50
27	10.23	12.73	13.89	14.70
28	10.34	12.92	14.07	14.90
29	10.47	13.12	14.22	15.15
30	10.60	13.26	14.38	15.37
31	10.73	13.39	14.51	15.62
32	10.88	13.57	14.68	15.82
33	10.97	13.72	14.80	16.05
34	11.10	13.85	14.93	16.22
35	11.18	14.01	15.05	16.36

b. Nonmachinable RBMC

Maximum Weight (pounds)	RBMC Zones 1 & 2 ($)	RBMC Zone 3 ($)	RBMC Zone 4 ($)	RBMC Zone 5 ($)
1	4.84	4.98	5.06	5.29
2	5.75	5.81	5.92	6.23
3	6.52	6.57	6.71	7.13
4	7.02	7.27	7.41	7.96
5	7.48	7.88	8.06	8.73
6	7.90	8.45	8.62	9.42
7	8.26	8.95	9.16	10.07
8	8.96	9.43	9.64	10.67
9	9.32	9.87	10.14	11.22
10	9.62	10.33	10.90	11.74
11	9.81	10.72	11.30	12.20
12	10.04	11.10	11.70	12.66
13	10.26	11.44	12.07	13.08
14	10.45	11.75	12.48	13.46
15	10.60	12.08	12.79	13.82
16	10.78	12.41	13.11	14.19
17	10.99	12.72	13.46	14.49
18	11.13	13.01	13.74	14.80
19	11.32	13.31	14.03	15.09
20	11.46	13.54	14.27	15.35
21	11.61	13.76	14.53	15.60
22	11.78	13.95	14.81	15.84
23	11.91	14.21	15.08	16.10
24	12.03	14.37	15.35	16.31
25	12.16	14.58	15.59	16.53

b. Nonmachinable RBMC (Continued)

Maximum Weight (pounds)	RBMC Zones 1 & 2 ($)	RBMC Zone 3 ($)	RBMC Zone 4 ($)	RBMC Zone 5 ($)
26	12.31	14.75	15.85	16.71
27	12.44	14.94	16.10	16.91
28	12.55	15.13	16.28	17.11
29	12.68	15.33	16.43	17.36
30	12.81	15.47	16.59	17.58
31	12.94	15.60	16.72	17.83
32	13.09	15.78	16.89	18.03
33	13.18	15.93	17.01	18.26
34	13.31	16.06	17.14	18.43
35	13.39	16.22	17.26	18.57
36	13.54	16.41	17.41	18.77
37	13.65	16.52	17.52	18.85
38	13.71	16.62	17.58	18.92
39	13.80	16.74	17.66	18.99
40	13.87	16.82	17.70	19.08
41	13.97	16.96	17.77	19.15
42	14.01	17.04	17.84	19.22
43	14.07	17.14	17.92	19.25
44	14.16	17.23	17.97	19.29
45	14.21	17.30	18.20	19.37
46	14.31	17.41	18.25	19.40
47	14.37	17.46	18.28	19.45
48	14.44	17.58	18.31	19.50
49	14.51	17.67	18.36	19.53
50	14.52	17.74	18.39	19.59

b. Nonmachinable RBMC (Continued)

Maximum Weight (pounds)	RBMC Zones 1 & 2 ($)	RBMC Zone 3 ($)	RBMC Zone 4 ($)	RBMC Zone 5 ($)
51	14.63	17.81	18.43	19.65
52	14.68	17.93	18.49	19.68
53	14.72	17.97	18.50	19.74
54	14.78	18.00	18.54	19.77
55	14.83	18.03	18.57	19.81
56	14.89	18.06	18.62	19.87
57	14.96	18.06	18.62	19.91
58	15.03	18.09	18.64	19.97
59	15.08	18.12	18.66	20.02
60	15.15	18.13	18.66	20.05
61	15.20	18.14	18.69	20.10
62	15.24	18.15	18.78	20.13
63	15.31	18.15	18.85	20.20
64	15.37	18.15	18.89	20.24
65	15.42	18.20	18.94	20.29
66	15.48	18.20	19.01	20.34
67	15.55	18.21	19.11	20.38
68	15.55	18.21	19.14	20.41
69	15.62	18.21	19.22	20.48
70	15.69	18.21	19.27	20.52
Oversized	33.54	34.11	35.14	36.70

c. Balloon Rate

RBMC entered pieces exceeding 84 inches in length and girth combined, but not more than 108 inches, and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

d. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.

RDU Entered

a. Machinable and Nonmachinable RDU to 35 pounds

Maximum Weight (pounds)	RDU ($)	Maximum Weight (pounds)	RDU ($)
1	1.65	26	3.26
2	1.73	27	3.31
3	1.80	28	3.35
4	1.86	29	3.40
5	1.92	30	3.44
6	1.98	31	3.48
7	2.03	32	3.53
8	2.08	33	3.57
9	2.13	34	3.60
10	2.17	35	3.64
11	2.27		
12	2.36		
13	2.44		
14	2.51		
15	2.59		
16	2.66		
17	2.74		
18	2.80		
19	2.87		
20	2.93		
21	2.99		
22	3.04		
23	3.10		
24	3.15		
25	3.21		

b. Nonmachinable RDU above 35 pounds

Maximum Weight (pounds)	RDU ($)	Maximum Weight (pounds)	RDU ($)
36	3.69	61	4.34
37	3.72	62	4.36
38	3.76	63	4.38
39	3.79	64	4.40
40	3.82	65	4.41
41	3.85	66	4.43
42	3.88	67	4.44
43	3.91	68	4.46
44	3.94	69	4.48
45	3.97	70	4.49
46	4.00	Oversized	7.68
47	4.02		
48	4.05		
49	4.08		
50	4.10		
51	4.12		
52	4.16		
53	4.18		
54	4.20		
55	4.22		
56	4.25		
57	4.27		
58	4.29		
59	4.31		
60	4.32		

c. Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in combined length plus girth must pay the oversized price.

2125 Premium Forwarding Service

2125.1 Description

a. Premium Forwarding Service provides residential delivery customers, and certain post office box customers, the option to receive substantially all mail addressed to a primary address instead at a temporary address by means of a weekly Priority Mail shipment. Parcels that are too large for the weekly shipment, mail pieces that require a scan upon delivery or arrive postage due at the office serving the customer's primary address, and certain Priority Mail pieces may be rerouted as specified in the Domestic Mail Manual. Rerouted Express Mail, First-Class Mail, and Priority Mail pieces incur no additional reshipping charges. Rerouted Standard Mail and Package Service pieces may be rerouted postage due.

b. Mail sent to a primary address for which an addressee has activated Premium Forwarding Service is not treated as undeliverable-as-addressed.

c. Premium Forwarding Service is available for a period of at least two weeks and not more than twelve months. Customers may not use Premium Forwarding Service simultaneously with temporary or permanent forwarding orders. Premium Forwarding Service is not available to customers whose primary address consists of a size three, four or five post office box, subject to exceptions allowed by the Postal Service, or a centralized delivery point.

2125.2 Prices

	($)
Enrollment	15.00
Weekly Reshipment	13.95

2200 INTERNATIONAL PRODUCTS

2205 Outbound International Expedited Services

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2205.6 Prices

Global Express Guaranteed

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Global Express Guaranteed:

Weight Not Over (lb.)	GXG Price Groups							
	1	2	3	4	5	6	7	8
0.5	$33.95	$34.95	$42.95	$93.95	$44.95	$45.95	$43.95	$63.95
1	$53.50	$55.75	$64.00	$110.00	$68.75	$68.75	$56.00	$79.00
2	$57.75	$63.00	$73.25	$128.50	$77.50	$78.50	$64.25	$97.50
3	$62.00	$70.25	$82.50	$147.00	$86.25	$88.25	$72.50	$116.00
4	$66.25	$77.50	$91.75	$165.50	$95.00	$98.00	$80.75	$134.50
5	$70.50	$84.75	$101.00	$184.00	$103.75	$107.75	$89.00	$153.00
6	$74.75	$92.00	$110.25	$202.50	$112.50	$117.50	$97.25	$171.50
7	$79.00	$99.25	$119.50	$221.00	$121.25	$127.25	$105.50	$190.00
8	$83.25	$106.50	$128.75	$239.50	$130.00	$137.00	$113.75	$208.50
9	$87.50	$113.75	$138.00	$258.00	$138.75	$146.75	$122.00	$227.00
10	$91.75	$121.00	$147.25	$276.50	$147.50	$156.50	$130.25	$245.50
11	$95.50	$125.25	$152.50	$291.00	$154.25	$166.25	$136.50	$258.00
12	$99.25	$129.50	$157.75	$305.50	$161.00	$176.00	$142.75	$270.50
13	$103.00	$133.75	$163.00	$320.00	$167.75	$185.75	$149.00	$283.00
14	$106.75	$138.00	$168.25	$334.50	$174.50	$195.50	$155.25	$295.50
15	$110.50	$142.25	$173.50	$349.00	$181.25	$205.25	$161.50	$308.00
16	$114.25	$146.50	$178.75	$363.50	$188.00	$215.00	$167.75	$320.50
17	$118.00	$150.75	$184.00	$378.00	$194.75	$224.75	$174.00	$333.00
18	$121.75	$155.00	$189.25	$392.50	$201.50	$234.50	$180.25	$345.50
19	$125.50	$159.25	$194.50	$407.00	$208.25	$244.25	$186.50	$358.00
20	$129.25	$163.50	$199.75	$421.50	$215.00	$254.00	$192.75	$370.50
21	$133.00	$167.75	$205.00	$436.00	$221.75	$263.75	$199.00	$383.00
22	$136.75	$172.00	$210.25	$450.50	$228.50	$273.50	$205.25	$395.50
23	$140.50	$176.25	$215.50	$465.00	$235.25	$281.25	$211.50	$408.00
24	$144.25	$180.50	$220.75	$479.50	$242.00	$289.00	$217.75	$420.50
25	$148.00	$184.75	$226.00	$494.00	$248.75	$296.75	$224.00	$433.00
26	$151.75	$188.25	$231.25	$508.50	$255.50	$304.50	$230.25	$445.50
27	$155.50	$191.75	$236.50	$523.00	$262.25	$312.25	$236.50	$458.00
28	$159.25	$195.25	$241.75	$537.50	$269.00	$320.00	$242.75	$470.50
29	$163.00	$198.75	$247.00	$552.00	$275.75	$327.75	$249.00	$483.00
30	$166.75	$202.25	$252.25	$566.50	$282.50	$335.50	$255.25	$495.50
31	$170.50	$205.75	$257.50	$581.00	$289.25	$343.25	$261.50	$508.00
32	$174.25	$209.25	$262.75	$595.50	$296.00	$351.00	$267.75	$520.50

33	$178.00	$212.75	$268.00	$610.00	$302.75	$358.75	$274.00	$533.00
34	$181.75	$216.25	$273.25	$624.50	$309.50	$366.50	$280.25	$545.50
35	$185.50	$219.75	$278.50	$639.00	$316.25	$374.25	$286.50	$558.00
36	$189.25	$223.25	$283.75	$653.50	$323.00	$382.00	$292.75	$570.50
37	$193.00	$226.75	$289.00	$668.00	$329.75	$389.75	$299.00	$583.00
38	$196.75	$230.25	$294.25	$682.50	$336.50	$397.50	$305.25	$595.50
39	$200.50	$233.75	$299.50	$697.00	$343.25	$405.25	$311.50	$608.00
40	$204.25	$237.25	$304.75	$711.50	$350.00	$413.00	$317.75	$620.50
41	$207.50	$240.75	$310.00	$722.00	$356.25	$420.75	$323.50	$630.00
42	$210.75	$244.25	$315.25	$732.50	$362.50	$428.50	$329.25	$639.50
43	$214.00	$247.75	$320.50	$743.00	$368.75	$436.25	$335.00	$649.00
44	$217.25	$251.25	$325.75	$753.50	$375.00	$444.00	$340.75	$658.50
45	$220.50	$254.75	$331.00	$764.00	$381.25	$451.75	$346.50	$668.00
46	$223.75	$258.25	$336.25	$774.50	$387.50	$459.50	$352.25	$677.50
47	$227.00	$261.75	$341.50	$785.00	$393.75	$467.25	$358.00	$687.00
48	$230.25	$265.25	$346.75	$795.50	$400.00	$475.00	$363.75	$696.50
49	$233.50	$268.75	$352.00	$806.00	$406.25	$482.75	$369.50	$706.00
50	$236.75	$272.25	$357.25	$816.50	$412.50	$490.50	$375.25	$715.50
51	$239.50	$275.00	$362.50	$827.00	$418.75	$498.25	$381.00	$725.00
52	$242.25	$277.75	$367.75	$837.50	$425.00	$506.00	$386.75	$734.50
53	$245.00	$280.50	$373.00	$848.00	$431.25	$513.75	$392.50	$744.00
54	$247.75	$283.25	$378.25	$858.50	$437.50	$521.50	$398.25	$753.50
55	$250.50	$286.00	$383.50	$869.00	$443.75	$529.25	$404.00	$763.00
56	$253.25	$288.75	$388.75	$879.50	$450.00	$537.00	$409.75	$772.50
57	$256.00	$291.50	$394.00	$890.00	$456.25	$544.75	$415.50	$782.00
58	$258.75	$294.25	$399.25	$900.50	$462.50	$552.50	$421.25	$791.50
59	$261.50	$297.00	$404.50	$911.00	$468.75	$560.25	$427.00	$801.00
60	$264.25	$299.75	$409.75	$921.50	$475.00	$568.00	$432.75	$810.50
61	$267.00	$302.50	$415.00	$932.00	$481.25	$575.75	$438.50	$820.00
62	$269.75	$305.25	$420.25	$942.50	$487.50	$583.50	$444.25	$829.50
63	$272.50	$308.00	$425.50	$953.00	$493.75	$591.25	$450.00	$839.00
64	$275.25	$310.75	$430.75	$963.50	$500.00	$599.00	$455.75	$848.50
65	$278.00	$313.50	$436.00	$974.00	$506.25	$606.75	$461.50	$858.00
66	$280.75	$316.25	$441.25	$984.50	$512.50	$614.50	$467.25	$867.50
67	$283.50	$319.00	$446.50	$995.00	$518.75	$622.25	$473.00	$877.00
68	$286.25	$321.75	$451.75	$1,005.50	$525.00	$630.00	$478.75	$886.50
69	$289.00	$324.50	$457.00	$1,016.00	$531.25	$637.75	$484.50	$896.00
70	$291.75	$327.25	$462.25	$1,026.50	$537.50	$645.50	$490.25	$905.50

Express Mail International

Express Mail International: Flat Rate Envelope

Maximum Weight (ounces)	Country Price Group									
	1 ($)	2 ($)	3 ($)	4 ($)	5 ($)	6 ($)	7 ($)	8 ($)	9 ($)	10 ($)
Flat Rate Envelope	26.95	26.95	28.95	28.95	28.95	28.95	28.95	28.95	28.95	28.95

Express Mail International: Retail

Weight Not Over (lb.)	EMI Price Groups									
	1	2	3	4	5	6	7	8	9	10
0.5	$26.95	$26.95	$28.95	$28.95	$28.95	$28.95	$28.95	$28.95	$28.95	$28.95
1	$31.50	$30.50	$33.00	$32.50	$33.50	$32.50	$35.50	$35.00	$34.00	$33.50
2	$35.00	$34.25	$37.75	$36.75	$38.00	$37.00	$40.25	$39.75	$38.50	$39.00
3	$38.50	$38.00	$42.50	$41.00	$42.50	$41.50	$45.00	$44.50	$43.00	$44.50
4	$42.00	$41.75	$47.25	$45.25	$47.00	$46.00	$49.75	$49.25	$47.50	$50.00
5	$45.50	$45.50	$52.00	$49.50	$51.50	$50.50	$54.50	$54.00	$52.00	$55.75
6	$49.00	$49.25	$56.75	$53.75	$56.00	$55.75	$59.75	$59.75	$57.25	$61.50
7	$52.50	$53.00	$61.50	$58.00	$60.50	$61.00	$65.00	$65.50	$62.50	$67.25
8	$56.00	$56.75	$66.25	$62.25	$65.00	$66.25	$70.25	$71.25	$67.75	$73.00
9	$59.50	$60.50	$71.00	$66.50	$69.50	$71.50	$75.50	$77.00	$73.00	$78.75
10	$63.00	$64.25	$75.75	$70.75	$74.00	$76.75	$80.75	$82.75	$78.25	$84.50
11	$66.50	$67.00	$81.00	$75.00	$78.50	$82.50	$86.50	$88.50	$83.50	$90.25
12	$70.00	$69.75	$86.25	$79.25	$83.00	$88.25	$92.25	$94.25	$88.75	$96.00
13	$73.50	$72.50	$91.50	$83.50	$87.50	$94.00	$98.00	$100.00	$94.00	$101.75
14	$77.00	$75.25	$96.75	$87.75	$92.00	$99.75	$103.75	$105.75	$99.25	$107.50
15	$80.50	$78.00	$102.00	$92.00	$96.50	$105.50	$109.50	$111.50	$104.50	$113.25
16	$84.00	$80.75	$107.75	$96.25	$101.00	$111.25	$115.25	$117.25	$109.75	$119.50
17	$87.50	$83.50	$113.50	$100.50	$105.50	$117.00	$121.00	$123.00	$115.00	$125.75
18	$91.00	$86.25	$119.25	$104.75	$110.00	$122.75	$126.75	$128.75	$120.25	$132.00
19	$94.50	$89.00	$125.00	$109.00	$114.50	$128.50	$132.50	$134.50	$125.50	$138.25
20	$98.00	$91.75	$130.75	$113.25	$119.00	$134.25	$138.25	$140.25	$130.75	$144.50
21	$101.50	$94.50	$136.50	$117.50	$123.50	$140.00	$144.00	$146.00	$136.00	$150.75
22	$105.00	$97.25	$142.25	$121.75	$128.00	$145.75	$149.75	$151.75	$141.25	$157.00
23	$108.50	$100.00	$148.00	$126.00	$132.50	$151.50	$155.50	$157.50	$146.50	$163.25
24	$112.00	$102.75	$153.75	$130.25	$137.00	$157.25	$161.25	$163.25	$151.75	$169.50
25	$115.50	$105.50	$159.50	$134.50	$141.50	$163.00	$167.00	$169.00	$157.00	$175.75
26	$119.00	$108.25	$165.25	$138.75	$146.00	$168.75	$172.75	$174.75	$162.25	$182.00
27	$122.50	$111.00	$171.00	$143.00	$150.50	$174.50	$178.50	$180.50	$167.50	$188.25
28	$126.00	$113.75	$176.75	$147.25	$155.00	$180.25	$184.25	$186.25	$172.75	$194.50
29	$129.50	$116.50	$182.50	$151.50	$159.50	$186.00	$190.00	$192.00	$178.00	$200.75
30	$133.00	$119.25	$188.25	$155.75	$164.00	$191.75	$195.75	$197.75	$183.25	$207.00
31	$136.50	$122.00	$194.00	$160.00	$168.50	$197.50	$201.50	$203.50	$188.50	$213.25
32	$140.00	$124.75	$199.75	$164.25	$173.00	$203.25	$207.25	$209.25	$193.75	$219.50
33	$143.50	$127.50	$205.50	$168.50	$177.50	$209.00	$213.00	$215.00	$199.00	$225.75
34	$147.00	$130.25	$211.25	$172.75	$182.00	$214.75	$218.75	$220.75	$204.25	$232.00
35	$150.50	$133.00	$217.00	$177.00	$186.50	$220.50	$224.50	$226.50	$209.50	$238.25
36	$154.00	$135.75	$222.75	$181.25	$191.00	$226.25	$230.25	$232.25	$214.75	$244.50
37	$157.50	$138.50	$228.50	$185.50	$195.50	$232.00	$236.00	$238.00	$220.00	$250.75
38	$161.00	$141.25	$234.25	$189.75	$200.00	$237.75	$241.75	$243.75	$225.25	$257.00
39	$164.50	$144.00	$240.00	$194.00	$204.50	$243.50	$247.50	$249.50	$230.50	$263.25
40	$168.00	$146.75	$245.75	$198.25	$209.00	$249.25	$253.25	$255.25	$235.75	$269.50
41	$171.50	$150.00	$251.50	$202.50	$213.50	$254.75	$259.00	$261.00	$241.00	$275.75
42	$175.00	$153.25	$257.25	$206.75	$218.00	$260.25	$264.75	$266.75	$246.25	$282.00
43	$178.50	$156.50	$263.00	$211.00	$222.50	$265.75	$270.50	$272.50	$251.50	$288.25

44	$182.00	$159.75	$268.75	$215.25	$227.00	$271.25	$276.25	$278.25	$256.75	$294.50
45	$185.50	-	$274.50	$219.50	$231.50	$276.75	$282.00	$284.00	$262.00	$300.75
46	$189.00	-	$280.25	$223.75	$236.00	$282.25	$287.75	$289.75	$267.25	$307.00
47	$192.50	-	$286.00	$228.00	$240.50	$287.75	$293.50	$295.50	$272.50	$313.25
48	$196.00	-	$291.75	$232.25	$245.00	$293.25	$299.25	$301.25	$277.75	$319.50
49	$199.50	-	$297.50	$236.50	$249.50	$298.75	$305.00	$307.00	$283.00	$325.75
50	$203.00	-	$303.25	$240.75	$254.00	$304.25	$310.75	$312.75	$288.25	$332.00
51	$206.50	-	$309.00	$245.00	$258.50	$309.75	$316.50	$318.50	$293.50	$338.25
52	$210.00	-	$314.75	$249.25	$263.00	$315.25	$322.25	$324.25	$298.75	$344.50
53	$213.50	-	$320.50	$253.50	$267.50	$320.75	$328.00	$330.00	$304.00	$350.75
54	$217.00	-	$326.25	$257.75	$272.00	$326.25	$333.75	$335.75	$309.25	$357.00
55	$220.50	-	$332.00	$262.00	$276.50	$331.75	$339.50	$341.50	$314.50	$363.25
56	$224.00	-	$337.75	$266.25	$281.00	$337.25	$345.25	$347.25	$319.75	$369.50
57	$227.50	-	$343.50	$270.50	$285.50	$342.75	$351.00	$353.00	$325.00	$375.75
58	$231.00	-	$349.25	$274.75	$290.00	$348.25	$356.75	$358.75	$330.25	$382.00
59	$234.50	-	$355.00	$279.00	$294.50	$353.75	$362.50	$364.50	$335.50	$388.25
60	$238.00	-	$360.75	$283.25	$299.00	$359.25	$368.25	$370.25	$340.75	$394.50
61	$241.50	-	$366.50	$287.50	$303.50	$364.75	$374.00	$376.00	$346.00	$400.75
62	$245.00	-	$372.25	$291.75	$308.00	$370.25	$379.75	$381.75	$351.25	$407.00
63	$248.50	-	$378.00	$296.00	$312.50	$375.75	$385.50	$387.50	$356.50	$413.25
64	$252.00	-	$383.75	$300.25	$317.00	$381.25	$391.25	$393.25	$361.75	$419.50
65	$255.50	-	$389.50	$304.50	$321.50	$386.75	$397.00	$399.00	$367.00	$425.75
66	$259.00	-	$395.25	$308.75	$326.00	$392.25	$402.75	$404.75	$372.25	$432.00
67	-	-	$401.00	$313.00	$330.50	$397.75	$408.50	$410.50	$377.50	-
68	-	-	$406.75	$317.25	$335.00	$403.25	$414.25	$416.25	$382.75	-
69	-	-	$412.50	$321.50	$339.50	$408.75	$420.00	$422.00	$388.00	-
70	-	-	$418.25	$325.75	$344.00	$414.25	$425.75	$427.75	$393.25	-

Pickup On Demand

Add $15.30 for each Pickup On Demand stop.

Global Express Guaranteed Online Price Incentives

A discount of 10 percent will be applied to Global Express Guaranteed prices.

Express Mail International Online Price Incentives

A discount of 8 percent will be applied to Express Mail International prices.

Express Mail International Permit Imprint Incentives

A discount of 8 percent will be applied to Express Mail International prices.

Express Mail International Corporate Account Incentives

A discount of 8 percent will be applied to Express Mail International prices. An annualized minimum volume of 1,000 pieces or an annualized minimum postage of $20, 000.00 will result in a 10 percent discount, and an annualized minimum volume of 3,000 pieces or an annualized minimum postage of $60, 000.00 will result in a 12 percent discount.

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2215 Outbound Priority Mail International

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2215.2 Size and Weight Limitations[1, 2]

	Length	Height	Thickness	Weight
Minimum	5.5 inches	none	3.5 inch	none
Maximum — Parcels	42 inches			70 pounds
	79 inches in combined length and girth			
~~Maximum — Circular — Parcels~~	~~42 inches~~			~~70 pounds~~
	~~girth measured along diameter of 64 inches~~			
— Flat-Rate Envelope	Nominal Size: 9.5 x 12.5 inches			4 pounds
— Flat-Rate Box	Nominal Sizes: LARGE: 12.25 x 12.25 x 6.0 inches ~~REGULAR~~ MEDIUM: 11.875 x 3.375 x 13.625 inches or 11 x 8.5 x 5.5 inches SMALL: 8.625 x 5.375 x 1.625 inches			20 pounds 20 pounds 4 pounds

Notes

1. Weight and other exceptional size limits based on shape and destination country restrictions may apply.

2. Items must be large enough to accommodate postage, address, and other required elements on the address side.

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2215.4 Price Categories

The following price categories are available for the product specified in this section:

- Priority Mail International Flat-Rate Envelope
  - Canada and Mexico
  - All other countries

- Priority Mail International Flat-Rate Boxes
  - Canada and Mexico
  - All other countries

- Priority Mail International Parcels
  Subject to the provisions of the Universal Postal Union Convention, Ordinary, uninsured Priority Mail International Parcels include indemnity coverage in the postage prices. Indemnity is limited to the lesser of the actual value of the contents or the maximum indemnity based on weight.
  - Price Groups 1 -10

- Online Incentives
  Available to customers who conduct Priority Mail International transactions online at usps.com or through an authorized PC Postage vendor or for qualifying customers who pay postage using information-based indicia (IBI) postage meters. The discount applies only to the postage portion of Priority Mail International rates.

- Permit Imprint Incentives
  Available to customers who pay for postage by permit imprint and use approved software for mail preparation and Customs-related functions.

***

2215.7 Prices

~~*Priority Mail International Flat-Rate Envelope*~~

~~Flat-Rate Envelopes are provided by the Postal Service.~~

	~~Country Price Group~~									
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~	~~10 ($)~~
~~Flat-Rate Envelope~~	~~10.95~~	~~10.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~

~~*Priority Mail International Flat-Rate Boxes*~~

~~Flat-Rate Boxes are provided by the Postal Service.~~

	~~Country Price Group~~									
	~~1 ($)~~	~~2 ($)~~	~~3 ($)~~	~~4 ($)~~	~~5 ($)~~	~~6 ($)~~	~~7 ($)~~	~~8 ($)~~	~~9 ($)~~	~~10 ($)~~
~~Small Flat-Rate Box~~	~~10.95~~	~~10.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~	~~12.95~~
~~Regular Flat-Rate Box~~	~~25.95~~	~~25.95~~	~~41.95~~	~~41.95~~	~~41.95~~	~~41.95~~	~~41.95~~	~~41.95~~	~~41.95~~	~~41.95~~
~~Large Flat-Rate Box~~	~~32.95~~	~~32.95~~	~~53.95~~	~~53.95~~	~~53.95~~	~~53.95~~	~~53.95~~	~~53.95~~	~~53.95~~	~~53.95~~

Priority Mail International: ~~I Parcels~~

Weight Not Over (lb.)	PMI Price Groups									
	1	2	3	4	5	6	7	8	9	10
Flat-Rate Envelope	$11.45	$11.45	$13.45	$13.45	$13.45	$13.45	$13.45	$13.45	$13.45	$13.45
Small-Flat Rate Box	$11.45	$11.45	$13.45	$13.45	$13.45	$13.45	$13.45	$13.45	$13.45	$13.45
Medium Flat-Rate Box	$26.95	$26.95	$43.45	$43.45	$43.45	$43.45	$43.45	$43.45	$43.45	$43.45
Large-Flat Rate Box	$33.95	$33.95	$55.95	$55.95	$55.95	$55.95	$55.95	$55.95	$55.95	$55.95
1	$20.00	$20.00	$26.50	$25.00	$28.00	$26.50	$25.50	$24.50	$24.50	$27.50
2	$21.75	$23.75	$30.75	$28.75	$31.05	$30.75	$30.15	$28.75	$28.25	$32.35
3	$23.50	$27.50	$35.00	$32.50	$34.10	$35.00	$34.80	$33.00	$32.00	$37.20
4	$25.25	$31.25	$39.25	$36.25	$37.15	$39.25	$39.45	$37.25	$35.75	$42.05
5	$27.00	$35.00	$43.50	$40.00	$40.20	$43.50	$44.10	$41.50	$39.50	$46.90
6	$28.75	$37.75	$47.25	$43.75	$43.25	$48.75	$48.75	$45.75	$42.25	$52.25
7	$30.50	$40.50	$51.00	$47.50	$46.30	$54.00	$53.40	$50.00	$45.00	$57.60
8	$32.25	$43.25	$54.75	$51.25	$49.35	$59.25	$58.05	$54.25	$47.75	$62.95
9	$34.00	$46.00	$58.50	$55.00	$52.40	$64.50	$62.70	$58.50	$50.50	$68.30
10	$35.75	$48.75	$62.25	$58.75	$55.45	$69.75	$67.35	$62.75	$53.25	$73.65
11	$37.50	$51.00	$66.00	$62.50	$58.50	$75.00	$72.40	$67.50	$57.00	$79.00
12	$39.25	$53.25	$69.75	$66.25	$61.55	$80.25	$77.45	$72.25	$60.75	$84.35
13	$41.00	$55.50	$73.50	$70.00	$64.60	$85.50	$82.50	$77.00	$64.50	$89.70
14	$42.75	$57.75	$77.25	$73.75	$67.65	$90.75	$87.55	$81.75	$68.25	$95.05
15	$44.50	$60.00	$81.00	$77.50	$70.70	$96.00	$92.60	$86.50	$72.00	$100.40
16	$46.25	$62.25	$84.75	$81.25	$73.75	$101.25	$97.65	$91.25	$75.75	$105.75
17	$48.00	$64.50	$88.50	$85.00	$76.80	$106.50	$102.70	$96.00	$79.50	$111.10
18	$49.75	$66.75	$92.25	$88.75	$79.85	$111.75	$107.75	$100.75	$83.25	$116.45
19	$51.50	$69.00	$96.00	$92.50	$82.90	$117.00	$112.80	$105.50	$87.00	$121.80
20	$53.25	$71.25	$99.75	$96.25	$85.95	$122.25	$117.85	$110.25	$90.75	$127.15
21	$55.00	$73.50	$103.50	$100.00	$89.00	$127.50	$122.90	$115.00	$94.50	$132.50
22	$56.75	$75.75	$107.25	$103.75	$92.05	$132.75	$127.95	$119.75	$98.25	$137.85
23	$58.50	$78.00	$111.00	$107.50	$95.10	$138.00	$133.00	$124.50	$102.00	$143.20
24	$60.25	$80.25	$114.75	$111.25	$98.15	$143.25	$138.05	$129.25	$105.75	$148.55
25	$62.00	$82.50	$118.50	$115.00	$101.20	$148.50	$143.10	$134.00	$109.50	$153.90
26	$63.75	$84.75	$122.25	$118.75	$104.25	$153.75	$148.15	$138.75	$113.25	$159.25
27	$65.50	$87.00	$126.00	$122.50	$107.30	$159.00	$153.20	$143.50	$117.00	$164.60
28	$67.25	$89.25	$129.75	$126.25	$110.35	$164.25	$158.25	$148.25	$120.75	$169.95
29	$69.00	$91.50	$133.50	$130.00	$113.40	$169.50	$163.30	$153.00	$124.50	$175.30
30	$70.75	$93.75	$137.25	$133.75	$116.45	$174.75	$168.35	$157.75	$128.25	$180.65
31	$72.50	$96.00	$141.00	$137.50	$119.50	$180.00	$173.40	$162.50	$132.00	$186.00
32	$74.25	$98.25	$144.75	$141.25	$122.55	$185.25	$178.45	$167.25	$135.75	$191.35
33	$76.00	$100.50	$148.50	$145.00	$125.60	$190.50	$183.50	$172.00	$139.50	$196.70
34	$77.75	$102.75	$152.25	$148.75	$128.65	$195.75	$188.55	$176.75	$143.25	$202.05
35	$79.50	$105.00	$156.00	$152.50	$131.70	$201.00	$193.60	$181.50	$147.00	$207.40
36	$81.25	$107.25	$159.75	$156.25	$134.75	$206.25	$198.65	$186.25	$150.75	$212.75
37	$83.00	$109.50	$163.50	$160.00	$137.80	$211.50	$203.70	$191.00	$154.50	$218.10
38	$84.75	$111.75	$167.25	$163.75	$140.85	$216.75	$208.75	$195.75	$158.25	$223.45
39	$86.50	$114.00	$171.00	$167.50	$143.90	$222.00	$213.80	$200.50	$162.00	$228.80
40	$88.25	$116.25	$174.75	$171.25	$146.95	$227.25	$218.85	$205.25	$165.75	$234.15

41	$90.00	$118.50	$178.50	$175.00	$150.00	$232.50	$223.90	$210.00	$169.50	$239.50
42	$91.75	$120.75	$182.25	$178.75	$153.05	$237.75	$228.95	$214.75	$173.25	$244.85
43	$93.50	$123.00	$186.00	$182.50	$156.10	$243.00	$234.00	$219.50	$177.00	$250.20
44	$95.25	$125.25	$189.75	$186.25	$159.15	$248.25	$239.05	$224.25	$180.75	$255.55
45	$97.00	-	$193.50	$190.00	$162.20	$253.50	$244.10	$229.00	$184.50	$260.90
46	$98.75	-	$197.25	$193.75	$165.25	$258.75	$249.15	$233.75	$188.25	$266.25
47	$100.50	-	$201.00	$197.50	$168.30	$264.00	$254.20	$238.50	$192.00	$271.60
48	$102.25	-	$204.75	$201.25	$171.35	$269.25	$259.25	$243.25	$195.75	$276.95
49	$104.00	-	$208.50	$205.00	$174.40	$274.50	$264.30	$248.00	$199.50	$282.30
50	$105.75	-	$212.25	$208.75	$177.45	$279.75	$269.35	$252.75	$203.25	$287.65
51	$107.50	-	$216.00	$212.50	$180.50	$285.00	$274.40	$257.50	$207.00	$293.00
52	$109.25	-	$219.75	$216.25	$183.55	$290.25	$279.45	$262.25	$210.75	$298.35
53	$111.00	-	$223.50	$220.00	$186.60	$295.50	$284.50	$267.00	$214.50	$303.70
54	$112.75	-	$227.25	$223.75	$189.65	$300.75	$289.55	$271.75	$218.25	$309.05
55	$114.50	-	$231.00	$227.50	$192.70	$306.00	$294.60	$276.50	$222.00	$314.40
56	$116.25	-	$234.75	$231.25	$195.75	$311.25	$299.65	$281.25	$225.75	$319.75
57	$118.00	-	$238.50	$235.00	$198.80	$316.50	$304.70	$286.00	$229.50	$325.10
58	$119.75	-	$242.25	$238.75	$201.85	$321.75	$309.75	$290.75	$233.25	$330.45
59	$121.50	-	$246.00	$242.50	$204.90	$327.00	$314.80	$295.50	$237.00	$335.80
60	$123.25	-	$249.75	$246.25	$207.95	$332.25	$319.85	$300.25	$240.75	$341.15
61	$125.00	-	$253.50	$250.00	$211.00	$337.50	$324.90	$305.00	$244.50	$346.50
62	$126.75	-	$257.25	$253.75	$214.05	$342.75	$329.95	$309.75	$248.25	$351.85
63	$128.50	-	$261.00	$257.50	$217.10	$348.00	$335.00	$314.50	$252.00	$357.20
64	$130.25	-	$264.75	$261.25	$220.15	$353.25	$340.05	$319.25	$255.75	$362.55
65	$132.00	-	$268.50	$265.00	$223.20	$358.50	$345.10	$324.00	$259.50	$367.90
66	$133.75	-	$272.25	$268.75	$226.25	$363.75	$350.15	$328.75	$263.25	$373.25
67	-	-	$276.00	$272.50	$229.30	$369.00	$355.20	$333.50	$267.00	-
68	-	-	$279.75	$276.25	$232.35	$374.25	$360.25	$338.25	$270.75	-
69	-	-	$283.50	$280.00	$235.40	$379.50	$365.30	$343.00	$274.50	-
70	-	-	$287.25	$283.75	$238.45	$384.75	$370.35	$347.75	$278.25	-

Pickup On Demand

Add $15.30 for each Pickup On Demand stop.

Online Incentives

A discount of 5 percent will be applied to Priority Mail International prices.

Permit Imprint Incentives

A discount of 5 percent will be applied to Priority Mail International prices.

2220 Inbound Air Parcel Post

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2220.2 Size and Weight Limitations

	Length	Height	Thickness	Weight
Minimum	5.5 inches	none	3.5 inch	none
Maximum	42 inches			70 pounds
	79 inches in combined length and girth			
	~~For circular parcels:~~ ~~a length plus diameter of 64 inches~~			

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2610.2 Global Expedited Package Services (GEPS) Contracts

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2610.2.2 Size and Weight Limitations

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Size and Weight for Priority Mail International:

	Length	Width	Height	Weight[1]
Minimum[2]	5.5 inches	None	3.5 inches	None
Maximum	42 inches	Length plus girth: 79 inches ~~Circular parcels:~~ ~~diameter: 64 inches~~		70

[1] Weight and other exceptional size limits based on shape and destination country restrictions may apply as specified in the International Mail Manual.
[2] Items must be large enough to accommodate postage, address and other required elements on the address side.

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2610.5 Global Plus Contracts

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Size and Weight for Priority Mail International:

	Length	Width	Height	Weight[1]
Minimum	5.5 inches	None	3.5 inches	none
Maximum	42 inches	Length plus girth: 79 inches ~~Circular parcels: length plus diameter: 64 inches~~		70

[1] Weight and other exceptional size limits based on shape and destination country restrictions may apply as specified in the International Mail Manual

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PART D

COUNTRY PRICE LISTS FOR INTERNATIONAL MAIL

4000 COUNTRY PRICE LISTS FOR INTERNATIONAL MAIL

Country	Market Dominant	Competitive			
		International Expedited Services		International Packages	IPA & ISAL[5]
	SPFCMI[1]	GXG[2]	EMI[3]	PMI[4]	
***					
Cuba	9	-	-	9	13
***					
Kosovo	5	4	-	5	12

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Notes

1. SPFCMI = Single-Piece First-Class Mail International. The same country price groups also apply to International Direct Sacks – M-Bags.

2. GXG = Global Express Guaranteed

3. EMI = Express Mail International

4. PMI = Priority Mail International Availability to certain destinations may be limited to flat rate envelopes and/or small flat rate boxes.

5. IPA = International Priority Airmail;
ISAL = International Surface Air Lift
IPA country price groups are also available at section 292.452 of the International Mail Manual. ISAL country price groups are also available at section 293.452 of the International Mail Manual.
ISAL service not available to all countries. International Mail Manual section 293.452.

CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 09-13

I hereby certify that the Governors voted on adopting Governors' Decision No. 09-13, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

/s/

Date: September 25, 2009

Julie S. Moore
Secretary of the Board of Governors

[FR Doc. E9–28828 Filed 11–30–09; 4:15 pm]
BILLING CODE 7710–12–C

DEPARTMENT OF STATE

[Public Notice 6829]

Suggestions for 2009–2011 Work Program for Joint Commission for Environmental Cooperation Established Pursuant to the United States-Chile Environmental Cooperation Agreement

ACTION: Notice of preparation of the 2009–2011 U.S.-Chile Environmental Cooperation Work Program and request for comments.

SUMMARY: The Department of State is soliciting ideas and suggestions for environmental cooperation projects between the United States and Chile. The United States and Chile are in the process of developing a 2009–2011 Work Program pursuant to the United States-Chile Environmental Cooperation Agreement (ECA) signed in June 2003. The ECA outlines broad areas for environmental cooperation with the objective of establishing a framework for cooperation between the United States and Chile to promote the conservation and protection of the environment, the prevention of pollution and degradation of natural resources and ecosystems, and the rational use of natural resources, in support of sustainable development. In addition, in the Environment Chapter of the U.S.-Chile Free Trade Agreement (FTA) (Chapter 19), ''[t]he Parties recognize the importance of strengthening capacity to protect the environment and promote sustainable development in concert with strengthening trade and investment relations between them [and] agree to undertake cooperative environmental activities.'' (U.S.-Chile FTA, Article 19.5(1)). The main areas of cooperation under the 2009–2011 Work Program are: (1) Strengthening the effective implementation and enforcement of environmental laws and regulations; (2) encouraging the development and adoption of sound environmental practices and technologies, particularly in business enterprises; (3) promoting the sustainable development and management of environmental resources, including wild fauna and flora, protected wild areas, and other ecologically important ecosystems; and (4) civil society participation in the environmental decision-making process and environmental education. During 2009–2011, the United States and Chile intend to continue to build upon the cooperative work initiated in the 2007–2008 Work Program, and to continue to follow up on the themes reflected in the environment chapter of the Free Trade Agreement (FTA).

The Department of State invites government agencies and the public, including NGOs, educational institutions, private sector enterprises and other interested persons, to submit written comments or suggestions regarding items for the Work Program and implementation of environmental cooperation activities. In preparing such comments or suggestions, we encourage submitters to refer to: (1) The U.S.-Chile ECA, (2) the U.S.-Chile Joint Commission for Environmental Cooperation (JCEC) 2007–2008 Work Program, (3) the U.S.-Chile FTA available at *http://www.ustr.gov,* and (4) the Environmental Review of the FTA. (Documents are available at: *http://www.state.gov/g/oes/env/trade/chile/index.htm*). In the near future, the Department of State will be seeking ideas and suggestions for environmental cooperation projects with Peru, Bahrain and Oman through a similar **Federal Register** notice.

DATES: To be assured of timely consideration, all written comments or suggestions are requested no later than December 28, 2009.

ADDRESSES: Written comments or suggestions should be e-mailed (*trontjm@state.gov*) or faxed to Jacqueline Tront ((202) 647–5947), U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy, with the subject line ''U.S.-Chile Work Program on Environmental Cooperation.''

FOR FURTHER INFORMATION CONTACT: Jacqueline Tront, telephone (202) 647–4750 U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy.

SUPPLEMENTARY INFORMATION: Article 19.3 of the U.S.-Chile FTA establishes an Environmental Affairs Council (EAC), which is required to meet at least once a year to discuss the implementation and progress of environmental cooperation between the U.S. and Chile. Article II of the U.S.-Chile ECA establishes the JCEC, with responsibilities which include developing and periodically reviewing the work program. The work program is a tool which identifies and outlines agreed upon environmental cooperation priorities, on-going efforts and possibilities for future cooperation.

The 2009–2011 Work Program focuses on the following priority areas, with the following corresponding general objectives: (1) Strengthening the effective implementation and enforcement of environmental laws and regulations (see FTA Art. 19.2.1(a); ECA Art. III.2); (2) Encouraging the development and adoption of sound environmental practices and technologies, particularly in business enterprises (see FTA Art. 19.10; ECA Art. II.2(d), Art. III.2(d)); (3) Promoting sustainable development and management of environmental resources, including wild fauna and flora, protected wild areas, and other ecologically important ecosystems (see FTA Annex 19.3 Art. 3(d); ECA Art. III.2(d)) and (4) Civil society participation in the environmental decision-making process and environmental education (see FTA Arts. 19.3 and 19.4; ECA Arts. III.1 and IV). We are seeking ideas and suggestions for activities which can be included in the work plan.

Ongoing environmental cooperation work includes: environmental law training workshops for Chilean judges; environmental permitting training for Chilean inspectors; a Patagonia volunteer expedition project where volunteers are engaged in trail and habitat repair within Chilean protected areas; and consultations and information exchange to support Chile's efforts to implement a Pollutant Release and Transfer Registry. Projects that have been successfully completed and in which we are engaged in follow up activities include: promotion of renewable energy opportunities in Chile (*e.g.,* geothermal, wind, biogas, solar, hydroelectric power) including sharing of prospective policy, regulatory and financial models for the adoption of renewable energy technologies; reduction of air pollution in the transport sector by implementing a diesel retrofit project; reduction of the environmental impacts of mining through information exchange on enhanced land use planning and generating and reviewing environmental impact assessments; and consultations on approaches to promoting sustainable agriculture and appropriate handling of pesticides and fertilizers. The listed activities and additional cooperative activities were outlined in previous work plans agreed upon by the EAC and discussed during previous meetings of the JCEC. Additional information can be found on the Web site listed below.

The ECA was signed on June 17, 2003, and sets out a framework for environmental cooperative activities between the two governments. The United States and Chile negotiated the ECA in concert with the U.S.-Chile FTA, which entered into force January 1, 2004. Article 19.3 of the U.S.-Chile FTA establishes the EAC. Article II of the ECA establishes the United States-Chile JCEC, with responsibilities which include developing and periodically reviewing the work program. The JCEC

is required to meet at least every two years. The first meetings of the EAC and JCEC were held on July 22, 2004, in Santiago, Chile, the second EAC meeting was held on October 24, 2005, in Washington, DC, and the third EAC meeting and second JCEC meeting were held October 23–24, 2006 in Santiago. At the fourth EAC meeting, held April 23–25, 2008, in Santiago, the EAC discussed the implementation of Chapter 19 of the FTA with respect to public participation, progress reports on the eight cooperation projects under Chapter 19, implementation of the 2005–2006 Work Program, and elaboration of the 2007–2008 Work Program.

At the upcoming fifth EAC meeting in Washington, DC on January 20, 2010, the EAC will review implementation of Chapter 19 and receive reports on (1) the progress of projects outlined in Chapter 19 of the FTA, (2) the roles and activities of the Trade and Environment Policy Advisory Committee and the public advisory committee that advises the Chilean government on environmental policy, and (3) the 2009–2011 Work Program. At its third meeting, the JCEC, during a Joint Public Session with the EAC, will receive reports on progress of implementing the 2007–2008 Work Program and review and approve the 2009–2011 Work Program. The EAC and JCEC will also consider recommendations for future bilateral cooperation.

In carrying out this cooperative work, the United States and Chile intend to explore the development of partnerships with private sector and civil society organizations, to build upon and complement ongoing bilateral cooperative work in other fora, and to explore opportunities for mutual collaboration in these priority areas with other countries in the Western Hemisphere.

For additional information: http://www.state.gov/g/oes/env/trade/chile/index.htm.

Disclaimer: This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting or money is directly associated with this request for suggestions for the 2009–2011 Work Program. There is no expectation of resources or funding associated with any comments or suggestions provided for the 2009–2011 Work Program.

Dated: November 30, 2009.

Willem H. Brakel,

Acting Director, Office of Environmental Policy, Department of State.

[FR Doc. E9–28876 Filed 12–2–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6830]

Meetings of the United States-Chile Environment Affairs Council and Joint Commission for Environmental Cooperation

ACTION: Notice of the U.S.-Chile Environmental Affairs Council and Joint Commission for Environmental Cooperation and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the United States and Chile intend to hold the fifth meeting of the Environment Affairs Council (the ''Council'') and the third meeting of the Joint Commission for Environmental Cooperation (the ''Commission'') in Washington, DC, on January 20, 2010. These bodies were created pursuant to Chapter 19 (Environment) of the United States-Chile Free Trade Agreement (FTA) and Article II of the United States-Chile Environmental Cooperation Agreement (ECA), respectively. A public information session will be held on January 20th, at 2 p.m., in room 1107 at the U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. If you would like to attend the session, please send the following information to Jacqueline Tront at the fax number or e-mail address listed below under the heading **ADDRESSES**: (1) Your name, (2) your date of birth, and (3) the number of a valid identification card that a government has issued to you.

The purpose of the Council and Commission meeting is detailed below under **SUPPLEMENTARY INFORMATION.**

The meeting agenda will include an overview of Chapter 19 and review of its implementation, progress report on projects outlined in the FTA's Annex 19.3 on Environmental Cooperation, a discussion of the roles and activities of the Trade and Environment Policy Advisory Committee and the public advisory committee that advises the Chilean government on trade and environment policy issues, an overview of progress of implementing selected projects under the 2007–2008 Work Program pursuant to the ECA, and the presentation of a new ECA Work Program. The Department of State and USTR invite interested agencies, organizations, and members of the public to submit written comments or suggestions regarding agenda items and to attend the public session.

In preparing comments, we encourage submitters to refer to:

- Chapter 19 of the FTA, including Annex 19.3
- The Final Environment Review of the FTA
- The ECA

These documents are available at: *http://www.state.gov/g/oes/env/trade/chile/index.htm.*

DATES: The Council/Commission meeting is to be held:

(1) January 20, 2010, 2 p.m. to 4:45 p.m., Washington, DC.

To be assured of timely consideration, comments are requested no later than January 10, 2009.

ADDRESSES: Written comments or suggestions should be submitted to both:

(1) Jacqueline Tront, Office of Environmental Policy, Bureau of Oceans, Environment, and Science, U.S. Department of State, by electronic mail at *trontjm@state.gov* with the subject line ''U.S.-Chile EAC/JCEC Meeting'' or by fax to (202) 647–5947; and

(2) Mara M. Burr, Deputy Assistant United States Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative by electronic mail at *mburr@ustr.eop.gov* with the subject line ''U.S.-Chile EAC/JCEC Meeting'' or by fax to (202) 395–9517.

FOR FURTHER INFORMATION CONTACT: Jacqueline Tront, Telephone (202) 647–4750 or Mara M. Burr, Telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: The United States-Chile FTA entered into force on January 4, 2004. Article 19.3 of the FTA establishes an Environment Affairs Council, which is required to meet at least once a year to discuss the implementation of, and progress under, Chapter 19. Chapter 19 requires that meetings of the Council include a public session. Under Chapter 19, the two governments agreed to undertake eight specific cooperative activities set out in Annex 19.3 to the Chapter and to negotiate a United States-Chile Environmental Cooperation Agreement to establish priorities for further cooperative environmental activities. The ECA entered into force on April 30, 2004, and sets out a framework for environmental cooperative activities between the two governments. Article II of the ECA establishes the United States-Chile Joint Commission for Environmental Cooperation, with responsibilities that include developing and periodically reviewing a work program. The Commission is required to meet at least every two years. The first meetings of the Council and the Commission were held on July 22, 2004, in Santiago, Chile, and the third meeting of the Council and second meeting of

the Commission were held on October 23–24, 2006, in Santiago, Chile.

At the fourth Council meeting held on April 24, 2008, in Santiago, Chile, the Council discussed the implementation of Chapter 19 of the FTA with respect to public participation, progress reports on the eight cooperative projects under Chapter 19, implementation of the 2005–2006 Work Program, and elaboration of the 2007–2008 Work Program. At that meeting the Trade and Environment Policy Advisory Committee and Chile's Advisory Committee held the first ever exchange between FTA-related trade and environment advisory committees.

At the upcoming fifth meeting of the Council, the Council will review the status of implementation of Chapter 19 and receive reports on levels of environmental protection (Article 19.1), enforcement of environmental laws (Article 19.2), opportunities for public participation (Article 19.4), the environment roster (Article 19.7), procedural matters (Article 19.8) and principles of corporate stewardship (Article 19.10). The Council will also assess the progress of projects outlined in Annex 19.3, the roles and activities of the Trade and Environment Policy Advisory Committee and the public advisory committee that advises the Chilean government on trade and environment policy issues, and the 2009–2010 Work Program Pursuant to the ECA. At its third meeting, the Commission, during a Joint Public Session with the Council, will receive reports on progress of implementing the 2007–2008 ECA Work Program and review and approve a new work program. At these meetings, the Council and Commission will also consider recommendations for future bilateral environmental cooperation. The public is advised to refer to the State Department Web site at *http://www.state.gov/g/oes/env/trade/chile/index.htm* and the USTR Web site at *http://www.USTR.gov* for further information.

Dated: November 30, 2009.

Willem H. Brakel,

Acting Director, Office of Environmental Policy, Department of State.

[FR Doc. E9–28877 Filed 12–2–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 6803]

Policy on Review Time for License Applications

AGENCY: Department of State.

ACTION: Notice.

In National Security Presidential Directive–56, Defense Trade Reform, signed January 22, 2008, the Department of State was directed to complete the review and adjudication of license applications within 60 days of receipt, except in cases where national security exceptions apply. The President further directed that these exceptions be published. A **Federal Register** notice entitled ''Policy on Review Time for License Applications'' was published on April 15, 2008 (73 FR 20357) stating five national security exceptions.

Experience in the last nineteen months has indicated that a sixth exception is required. It has been noted in reviews that events may require the Department of State to initiate a review of an established export policy relevant to license applications. By the nature of the established deadline, this might result in cases that have been approvable before the review being returned without action to the applicant while the review is ongoing. Enforcement of the deadline without being able to account for these situations might result in another applicant's license, submitted after the first license but that had not reached the 60-day deadline, being approved once the review is complete; inadvertently creating an unlevel playing field. As such, the Directorate of Defense Trade Controls has added a sixth exception to account for this issue. In accordance with NSPD–56, the following six national security exceptions are applicable:

(1) When a Congressional Notification is required: The Arms Export Control Act Section 36 (c) and (d) and the International Traffic in Arms Regulations, 22 CFR 123.15, requires a certification be provided to Congress prior to granting any license or other approval for transactions, if it meets the requirements identified for the sale of major defense equipment, manufacture abroad of significant military equipment, defense articles and services, or the re-transfer to other nations. Notification thresholds differ based on the dollar value, countries concerned and defense articles and services.

(2) Required Government Assurances have not been received. These would include, for example, Missile Technology Control Regime Assurances, and Cluster Munitions assurances.

(3) End-use Checks have not been completed. (Commonly referred to as ''Blue Lantern'' checks. End-use checks are key to the U.S. Government's prevention of illegal defense exports and technology transfers, and range from simple contacts to verifying the bona fides of a transaction to physical inspection of an export.)

(4) The Department of Defense has not yet completed its review.

(5) A Waiver of Restrictions is required. (For example, a sanctions waiver.)

(6) When a related export policy is under active review and pending final determination by the Department of State.

Dated: November 23, 2009.

Robert S. Kovac,

Acting Deputy Assistant Secretary for Defense Trade, Bureau of Political Military Affairs, Department of State.

[FR Doc. E9–28875 Filed 12–2–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. FHWA–2009–0123]

Notice of Funding Availability for Applications for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program; Clarification of TIFIA Selection Criteria; and Request for Comments on Potential Implementation of Pilot Program To Accept Upfront Payments for the Entire Subsidy Cost of TIFIA Credit Assistance

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of Funding Availability; Clarification of Selection Criteria; Request for Comments.

SUMMARY: The DOT's TIFIA Joint Program Office (JPO) announces the availability of a limited amount of funding in fiscal year (FY) 2010 to support new applications for credit assistance. Under TIFIA, the DOT provides secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects of regional or national significance. Projects must meet statutorily specified criteria to be selected for credit assistance.

Because demand for the TIFIA program now exceeds budgetary resources, the DOT hereby formally

announces the suspension of the program's open application process and the return to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against program objectives. This notice outlines the process that applicants must follow for Federal FY 2010.

Additionally, the DOT provides new language clarifying its use of the TIFIA selection criteria, incorporating explicit consideration of these policy objectives: livability, economic competitiveness, safety, sustainability, and state of good repair. Finally, in light of constrained resources vis-à-vis demand for TIFIA assistance, the DOT requests comments regarding the potential implementation of a pilot program to accept, from qualified borrowers, an upfront fee payment to offset the entire subsidy cost of TIFIA credit assistance.

DATES: For consideration in the FY 2010 funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST on December 31, 2009, using the revised form on the TIFIA Web site: *http://tifia.fhwa.dot.gov/guide_apps/*. Applicants that have previously submitted Letters of Interest must restate them with additional information as outlined below.

The application due date will be established after consultation between the TIFIA JPO and the applicant.

Comments regarding the potential pilot program must be submitted by 4:30 p.m. EST on December 31, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Submit all Letters of Interest to the attention of Mr. Duane Callender via e-mail at: *TIFIACredit@dot.gov*. Submitters should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. Only Letters of Interest received via e-mail, as provided above, shall be deemed properly filed.

Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 1200 New Jersey Avenue, SE., Washington, DC 20590 or fax comments to (202) 493–2251. Provide two copies of comments submitted by mail or courier. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov*. All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. 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).

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Duane Callender via e-mail at *TIFIACredit@dot.gov* or via telephone at 202–366–9644. A TDD is available at 202–366–7687. Substantial information, including the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site: *http://tifia.fhwa.dot.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 241, (as amended by sections 1601–02 of Pub. L. 109–59) established the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the U.S. Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. The TIFIA regulations (49 CFR part 80) provide specific guidance on the program requirements.[1] On January 5, 2001, at 65 FR 2827, the Secretary of Transportation (Secretary) delegated to the Federal Highway Administration (FHWA) the authority to act as the Executive Agent for the TIFIA program (49 CFR 1.48(b)(6)). The TIFIA Joint Program Office (JPO), a component of the FHWA Office of Innovative Program Delivery, has responsibility for coordinating program implementation.

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the thresholds and expanding eligibility for TIFIA credit assistance. SAFETEA–LU authorized $122 million annually from the Highway Trust Fund (HTF) for fiscal years 2005 to 2009 in TIFIA budget authority to pay the subsidy cost of credit assistance. After reductions for administrative expenses and application of the annual obligation limitation, TIFIA has approximately $110 million available annually to provide credit subsidy support to projects. Although dependent on the individual risk profile of each loan, collectively, this budget authority represents approximately $1.1 billion in annual lending capacity. As detailed below, the TIFIA JPO is able to provide a limited amount of credit assistance to new applicants in FY 2010.

II. Eligible Projects

Highway, passenger rail, transit, and intermodal projects (including intelligent transportation systems) may receive credit assistance under TIFIA. Additionally, SAFETEA–LU expanded eligibility to private rail facilities providing public benefit to highway users, and surface transportation infrastructure modifications necessary to facilitate direct intermodal transfer and access into and out of a port terminal. *See* the revised definition of ''project'' in 23 U.S.C. 601(a)(8) and Chapter 3 of the TIFIA Program Guide for a description of eligible projects.

III. Types of Credit Assistance

The DOT may provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees. These types of credit assistance are defined in 23 U.S.C. 601 and 49 CFR 80.3. Subject to certain conditions, the TIFIA credit facility can hold a subordinate lien on pledged revenues. The maximum amount of TIFIA credit assistance to a project is 33 percent of eligible project costs.

IV. Threshold Requirements

Projects seeking TIFIA assistance must meet certain statutory threshold requirements. Generally, the minimum size for TIFIA projects is $50 million of eligible project costs; however, the minimum size for TIFIA projects principally involving the installation of an intelligent transportation system is

[1] The TIFIA regulations have not been updated to reflect changes enacted in Public Law 109–59, SAFETEA–LU. Where the statute and the regulation conflict, the statute takes precedence. See the TIFIA Program Guide for updated program information.

$15 million. Each project seeking TIFIA assistance must apply to the DOT, and must satisfy the applicable state and local transportation planning requirements. Each application must identify a dedicated revenue source to repay the TIFIA loan, and each private applicant must receive public approval for its project as demonstrated by satisfaction of the applicable planning and programming requirements. These eligibility requirements are detailed in 23 U.S.C. 602(a) and Chapter 3 of the TIFIA Program Guide.

V. Rating Opinions

The senior debt obligations for each project receiving TIFIA credit assistance must obtain an investment grade rating from at least one nationally recognized credit rating agency, as defined in 23 U.S.C. 601(a)(10) and 49 CFR 80.3. If the TIFIA credit instrument is proposed as the senior debt, then it must receive the investment grade rating.

To demonstrate this potential, each application must include a preliminary rating opinion letter from a credit rating agency that addresses the creditworthiness of the senior debt obligations funding the project (for example, those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the default risk of the TIFIA credit instrument, and that concludes there is a reasonable probability for the senior debt obligations to receive an investment grade rating. This preliminary rating opinion letter will be based on the financing structure proposed by the applicant. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance.

Letters of Interest submitted pursuant to this notice do not need to include the preliminary rating opinion letter. Only those invited to submit applications will be required to obtain the preliminary rating opinion letter.

Each project selected for TIFIA credit assistance must obtain an investment grade rating on its senior debt obligations (which may be the TIFIA credit facility) and a revised opinion on the default risk of the TIFIA credit instrument before the FHWA will execute a credit agreement and disburse funds. More detailed information about these TIFIA credit opinions and ratings may be found in the Program Guide on the TIFIA Web site at *http://tifia.fhwa.dot.gov/guide_apps/*.

VI. Letters of Interest and Applications

Because the demand for credit assistance now exceeds budgetary resources, it is no longer feasible for DOT to maintain, as it has since 2002, an open process whereby the TIFIA JPO accepts applications on a ''first come, first serve'' basis as defined by the optimal schedule of the applicant. Instead, pursuant to this notice, the DOT returns to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program objectives.

Applicants seeking TIFIA credit assistance for FY 2010 must submit a Letter of Interest describing the project fundamentals and addressing the TIFIA selection criteria. For consideration in the FY 2010 funding cycle, Letters of Interest must be submitted by 4:30 p.m. EST on December 31, 2009, using the newly revised form on the TIFIA Web site: *http://tifia.fhwa.dot.gov/guide_apps/*. Applicants that have previously submitted Letters of Interest must restate them using the newly revised form. For the purpose of completing its evaluation, the TIFIA JPO staff may contact an applicant regarding specific information in the Letter of Interest.

A public agency that seeks access to TIFIA on behalf of multiple competitors for a project concession must submit the project's Letter of Interest. Although the public agency would not become the TIFIA borrower, nor even have yet identified the TIFIA applicant, it must provide information sufficient for the DOT to evaluate the project against the TIFIA program objectives. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

After concluding its review of the Letters of Interest, the DOT will invite complete applications (including the preliminary rating opinion letter and detailed plan of finance) for the highest-rated projects. The application due date will be established after consultation between the TIFIA JPO and the applicant.

An invitation to apply for credit assistance does not guarantee the DOT's approval, which will remain subject to evaluation based on TIFIA's statutory credit standards and the successful negotiation of all terms and conditions.

VII. Fees

There is no fee to submit a Letter of Interest. Unless otherwise indicated in a subsequent notice published in the **Federal Register,** each invited applicant must submit, concurrent with its application, a non-refundable fee of $50,000, an amount based on historical costs incurred by the TIFIA JPO for financial advisory services to help evaluate TIFIA applications. The FHWA no longer accepts paper checks, so payments should be made via ACH, at *https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=18446839*. For successful applicants, this fee will be credited toward final payment of a credit processing fee (also referred to as a transaction fee), to be assessed at financial close, to reimburse the TIFIA JPO for actual financial and legal costs.

For projects that enter credit negotiations, the DOT and the applicant will execute a term sheet that, among other conditions, will require the borrower to pay at closing or, in the event no final credit agreement is reached, upon invoicing by the TIFIA JPO, an amount equal to the actual costs incurred by the TIFIA JPO in procuring the assistance of outside financial advisors and legal counsel through execution of the credit agreement(s) and satisfaction of all funding requirements of those agreements. Typically, the amount of this fee has ranged from $200,000 to $300,000, although it has been greater for projects that require complex financial structures and extended negotiations.

As described below, the DOT may charge the borrower a supplemental upfront fee to reduce the subsidy cost to the Federal Government of providing credit assistance. The subsidy cost calculation, also described below, is based on anticipated risk to the Federal Government. This fee is paid by or on behalf of the borrower at the DOT's point of obligation, usually at the execution of the credit agreement.

The TIFIA JPO charges each borrower an annual fee for loan servicing activities associated with each TIFIA credit instrument. The current fee, adjusted annually per the Consumer Price Index, is $11,500 per year.

Finally, the TIFIA credit agreements will allow the TIFIA JPO to charge, as incurred, a monitoring fee equal to its costs of outside advisory services required to assist the TIFIA JPO to modify or enforce the agreement.

Applicants may not include any of the fees described above—or any expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter)—among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

VIII. Clarification of Selection Criteria

The eight TIFIA selection criteria are described in statute at 23 U.S.C. 602(b) and assigned relative weights via regulation at 49 CFR 80.15. The criteria

are restated below with (where appropriate) clarifying language indicating how the DOT will interpret them. In general, these clarifications indicate the DOT's desire to give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. The clarifying language is provided *in italics.*

Listed in order of relative weight, the TIFIA selection criteria are as follows:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system. *This includes consideration of livability: providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.; economic competitiveness: contributing to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods; and safety: improving the safety of U.S. transportation facilities and systems and the communities and populations they impact.* Relative weight: 20 percent.

(ii) The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment. Relative weight: 20 percent.

(iii) The extent to which the project helps maintain or protect the environment. *This includes sustainability: improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems; and the state of good repair: improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials.* Relative weight: 20 percent.

(iv) The creditworthiness of the project, including a determination by the Secretary of Transportation that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment. Relative weight: 12.5 percent.

(v) The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed. Relative weight: 12.5 percent.

(vi) The extent to which the project uses new technologies, including intelligent transportation systems, to enhance the efficiency of the project. Relative weight: 5 percent.

(vii) The amount of budget authority required to fund the Federal credit instrument made available under TIFIA. Relative weight: 5 percent.

(viii) The extent to which TIFIA assistance would reduce the contribution of Federal grant assistance to the project. Relative weight: 5 percent.

Note that, when evaluating the Letters of Interest, the information needed to address criterion (iv), creditworthiness, and criterion (vii), budget authority, is unlikely to be available in sufficient detail. Therefore, the DOT will not employ these two criteria when reviewing the Letters of Interest. However, DOT will consider these criteria when reviewing project applications.

IX. Potential Pilot Program

As noted above, SAFETEA–LU authorized $122 million annually from the HTF for fiscal years 2005–2009 in TIFIA budget authority to pay the subsidy cost of credit assistance. As of the publication date of this notice, two short-term extensions of the surface transportation reauthorization act have been enacted continuing highway programs that were authorized through FY 2009, and the expectation is that Congress will reauthorize an equivalent amount of budget authority for the TIFIA program in FY 2010. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years. The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like all funds subject to the annual Federal-aid obligation ceiling, the amount of TIFIA budget authority available in a given year may be less than the amount authorized for that fiscal year.

Beginning in FY 2008, for the first time since the inception of the TIFIA program, the total credit requests from TIFIA applicants exceeded available resources. This new imbalance immediately proved substantial, as requests far exceeded the remaining authority provided by SAFETEA–LU, as well as an additional year (for example, FY 2010) funded at the equivalent level. In response, the Department suspended its consideration of new applications and reserved the anticipated fiscal years 2009 and 2010 appropriations with the expectation that several, if not all, of the existing applicants would—for the first time—contribute to the Government's cost of providing credit assistance in the form of an upfront fee as contemplated by the authorizing statute and the implementing regulation.

As stated in 23 U.S.C. 603(b)(7), 603(e) and 604(b)(9), the DOT may establish fees at a level sufficient to cover all or a portion of its costs of making a secured loan, loan guarantee, or line of credit. From this authority, 49 CFR 80.17(c) states:

> If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount [of eligible TIFIA assistance].

Consistent with the Federal Credit Reform Act of 1990 and the requirements of the Office of Management and Budget (OMB), the subsidy cost of a loan is affected by recovery assumptions, allowance for defaults, the borrower's interest rate, and fees. The factors that most heavily influence the subsidy cost of a TIFIA loan fall into the recoveries category (for example, the repayment pledge and whether the debt is senior or subordinate) and the allowance for defaults category (including the credit rating on the debt and the degree of back-loading). The borrower's interest rate will also affect the subsidy cost of the TIFIA loan. The final subsidy cost estimate is expressed as a percentage of the principal amount of the credit assistance.

By charging borrowers an upfront fee, the DOT is able to support more projects than under its previous policy—established when budget resources were ample—of funding a portion of the subsidy cost with its own monies. In fact, to meet existing applicant demand, the DOT used this authority to limit the maximum amount of funds it would obligate for any single project's subsidy cost, thus requiring borrowers in several instances to pay an upfront fee to offset the subsidy cost of TIFIA credit assistance. Even with this limitation, the DOT has had to reserve much of its anticipated FY 2010 TIFIA budget authority to support these projected commitments, relying primarily on future years' authorizations and appropriations to fund more credit assistance.

Several potential applicants, however, rather than waiting to compete for scarce TIFIA funds in FY 2010 and beyond, have indicated an interest in

the option of paying a fee to offset the entire budgetary cost to the Federal Government. As a result, the DOT hereby announces that it is exploring the potential of implementing a pilot program under which the DOT would accept applications for projects where the borrowers are willing and able to pay a fee to offset the entire subsidy cost of TIFIA credit assistance. The purpose of this pilot program would be to extend credit, consistent with policy objectives, to qualified projects that the DOT otherwise might not select for TIFIA assistance merely due to insufficient budgetary resources. This pilot program would be undertaken under authority of 23 U.S.C. 603(a)(7), 603(e), (604)(b)(9), and 49 CFR 80.17(c), which allow successful applicants to pay a fee to reduce the cost to the Federal Government associated with the credit assistance provided to the project. Such a project would be evaluated based on satisfaction of the same TIFIA selection criteria, as clarified in this notice, which apply to all applicants.

The DOT will take all comments regarding the potential pilot program into consideration and, if it decides to proceed with the pilot program, may revise some elements of this notice. Depending on the nature of the comments and the number of Letters of Interest submitted, the DOT may invite applications without publishing a supplemental notice. If the DOT decides to proceed with the pilot program, qualified applicants that have responded to this notice would become eligible to pay an upfront fee to offset the entire cost of providing TIFIA credit assistance.

Authority: 23 U.S.C. 601–609; 49 CFR 1.48(b)(6); 23 CFR part 180; 49 CFR part 80; 49 CFR part 261; 49 CFR part 640.

Issued on: November 20, 2009.

Victor M. Mendez,

Administrator.

[FR Doc. E9–28860 Filed 12–2–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35306]

Lassen Valley Railway LLC—Acquisition and Operation Exemption—Union Pacific Railroad Company

Lassen Valley Railway LLC (LVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 22.34 miles of rail line owned by Union Pacific Railroad Company (UP): (1) the Flanigan Industrial Lead, between milepost 338.33 near Flanigan, NV, and milepost 360.10 near Wendel, CA, and (2) the Susanville Industrial Lead, between milepost 358.68 and milepost 359.25, near Wendel.[1]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35307, *Kern W. Schumacher—Continuance in Control Exemption—Lassen Valley Railway LLC,* wherein Kern W. Schumacher seeks to continue in control of LVR, upon LVR becoming a Class III rail carrier.

The transaction is expected to be consummated on or shortly after December 17, 2009 (the effective date of the exemption).

LVR certifies that its projected annual revenues as a result of the transaction will not result in its becoming a Class II or Class I rail carrier and further certifies that its projected annual revenue will not exceed $5 million.

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.

If the verified 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. Petitions for stay must be filed no later than December 10, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35306, 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 Fritz R. Kahn, 1920 N Street, NW. (8th Floor), Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 25, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–28803 Filed 12–2–09; 8:45 am]

BILLING CODE 4915–01–P

[1] According to LVR, the rail lines involved were the subject of an abandonment petition in *Union Pacific Railroad Company—Abandonment Exemption—in Lassen County, CA, and Washoe County, NV,* STB Docket No. AB–33 (Sub-No. 230X) (STB served Jan. 26, 2007). An offer of financial assistance (OFA) was filed by Robert Alan Kemp d/b/a Nevada Central Railroad to acquire a 220-foot segment of UP's Flanigan Industrial Lead (beginning at milepost 338.33). The OFA was rejected by decision served September 19, 2008. On September 29, 2008, Mr. Kemp filed an appeal of the Board's decision, which was denied by decision served January 27, 2009. It is indicated that Mr. Kemp has petitioned for judicial review of the Board's January 27 decision, and that petition is pending before the United States Court of Appeals for the Ninth Circuit.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35307]

Kern W. Schumacher—Continuance in Control Exemption—Lassen Valley Railway LLC

Kern W. Schumacher (Schumacher), a noncarrier, has filed a verified notice of exemption to continue in control of Lassen Valley Railway LLC (LVR) upon LVR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35306, *Lassen Valley Railway LLC—Acquisition and Operation Exemption—Union Pacific Railroad Company.* In that proceeding, LVR seeks an exemption under 49 CFR 1150.31 to acquire and operate approximately 22.34 miles of rail line between Flanigan, NV, and Wendel, CA, owned by Union Pacific Railroad Company.

The parties intend to consummate the transaction on or after December 17, 2009, the effective date of the exemption.

Mr. Schumacher currently controls six Class III rail carriers: Tulare Valley Railroad Company (TVR), Kern Valley Railroad Company (KVR), V&S Railway, Inc. (V&S), Gloster Southern Railroad Company LLC (GLSR), Grenada Railway LLC (GRYR), and Natchez Railway LLC (NTZR). TVR owns 5.9 miles of rail line in California; KVR owns 2 miles of rail line in Colorado; V&S owns 27 miles of rail line in Kansas and 122 miles of rail line in Colorado; GLSR owns 34.8 miles of rail line in Mississippi and Louisiana; GRYR owns 186.82 miles of rail line in Mississippi; and NTZR owns 65.6 miles of rail line in Mississippi.

As represented, Mr. Schumacher has many years of experience managing short line railroads. Mr. Schumacher anticipates that, with the substantial

resources at his disposal, he will be able to maintain, and where necessary, rehabilitate the lines of LVR, restore service on the lines, encourage shippers to locate their facilities along the lines, and create a financially viable railroad.

Mr. Schumacher represents that: (1) The rail lines to be acquired by LVR do not connect with any other railroad in its corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the rail lines with any other railroad in its corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified 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 no later than December 10, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35307, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, 1920 N Street, NW. (8th Floor), Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 25, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–28802 Filed 12–2–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Saul Ewing LLP on behalf of Trinity Industries, Inc. (WB605–6—11/19/09) for permission to use certain data from the Board's 2008 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–28870 Filed 12–2–09; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Thursday,
December 3, 2009

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0053; FRL–8983–5]

RIN 2060–AN47

National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing national emission standards for control of hazardous air pollutants (HAP) for the Paints and Allied Products Manufacturing area source category. The final rule establishes emission standards in the form of management practices for volatile HAP, and emission standards in the form of equipment standards for particulate HAP. The emissions standards for new and existing sources are based on EPA's determination as to what constitutes the generally available control technology or management practices (GACT) for the area source category.

DATES: This final rule is effective on December 3, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0053. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov index.* 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, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Melissa Payne, Regulatory Development and Policy Analysis Group, Office of Air Quality Planning and Standards (C404–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, *telephone number:* (919) 541–3609; *fax number:* (919) 541–0242; *e-mail address: payne.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information in this preamble is organized as follows:

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V. Summary of Comments and Responses
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  G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by this final rule are shown in the table below. You are subject to this subpart if you own or operate a facility that performs paints and allied products manufacturing that is an area source of hazardous air pollutant (HAP) emissions and processes, uses, or generates materials containing the following HAP: benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel.

The paints and allied products manufacturing area source rule (CCCCCCC) covers all coatings, but does not include resin manufacturing, which is covered by the chemical manufacturing area source standard (VVVVVV). Facilities that manufacture both resins and coatings are required to comply with both rules. Paints and allied products are defined in Sec. 63.11607 as any material such as a paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives. Typically, the industries that manufacture these products are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. The source category does not include the following: (1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents; (2) the manufacture of electroplated and electroless metal films; (3) the manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and allied products;[1] and (4) activities by end users of paints or allied products to ready those materials for application.

[1] Production of paint thinners and paint remover is covered under the Industrial Organic Chemical Manufacturing Area Source NESHAP, and electroplated and electroless metal films are covered under the Plating and Polishing Operations Area Source NESHAP. Resins manufacturing is covered under the Plastic Materials and Resins Manufacturing Area Source NESHAP and pigments manufacturing is covered under the Inorganic Pigment Manufacturing Area Source NESHAP.

Category	NAICS code [2]	Examples of regulated entities
Paint & Coating Manufacturing	325510	Area source facilities engaged in mixing pigments, solvents, and binders into paints and other coatings, such as stains, varnishes, lacquers, enamels, shellacs, and water repellant coatings for concrete and masonry.
Adhesive Manufacturing	325520	Area source facilities primarily engaged in manufacturing adhesives, glues, and caulking compounds.
Printing Ink Manufacturing	325910	Area source facilities primarily engaged in manufacturing printing inkjet inks and inkjet cartridges.
All Other Miscellaneous Chemical Product and Preparation Manufacturing.	325998	Area source facilities primarily engaged in manufacturing indelible ink, India ink writing ink, and stamp pad ink.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11599, subpart CCCCCCC (NESHAP for Area Sources: Paints and Allied Products Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the state delegated authority or the EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through EPA's Technology Transfer Network (TTN). A copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 1, 2010. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112(d) of the Clean Air Act requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. EPA implemented these provisions in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999). Specifically, in the Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' A primary goal of the Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT. This is particularly important when developing regulations, like this one, that may impact many small businesses, as defined by the Small Business Administration.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we

[2] North American Industry Classification System.

consider the costs and economic impacts of available control technologies and management practices on that category.

We are promulgating these national emission standards in response to a court-ordered deadline that requires EPA to issue standards for categories listed pursuant to section 112(c)(3) and (k) by November 16, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006).

III. Summary of Changes Since Proposal

This final rule contains several revisions and clarifications to the proposed rule made after considering public comments. The following sections present a summary of the changes to the proposed rule. We explain the reasons for these changes in detail in the summary of comments and responses (section V of this preamble).

A. Applicability

We made several changes to clarify the applicability of this final rule. Specifically, we have clarified that the final rule does not include retail and commercial paints and allied products operations which add and mix pigments to pre-manufactured products per customer specifications.

We have revised the definition of ''paints and allied products manufacturing'' to exclude activities by end users of paints and allied products to ready those materials for application. We have also revised the definition of ''paints and allied products manufacturing process'' to exclude weighing, mixing, tinting, blending, diluting, stabilizing, or any other handling of these paints and allied products to ready these materials for use by end users.

Furthermore, we clarified the types of operations by end users that are not covered by this area source category. An end user is someone who applies a coating to substrate, similar to the Miscellaneous Coating Manufacturing major source rule (40 CFR part 63, subpart HHHHH). The final rule does not apply to activities conducted by end users of coating products in preparation for application (68 FR 69164, December 11, 2003). Thus, operations that modify a purchased coating prior to application at the purchasing facility are not included in the Paints and Allied Products Manufacturing area source category; this would apply only if the purchased product is already a coating that an end user could apply as purchased. The activities and operations described above are not subject to today's rule because they were not part of the listed source category under CAA section 112(c)(3).

In the proposed rule, we proposed that the affected source include the entire facility if the facility emitted any of the paints and allied products manufacturing target HAP. Specifically, under the proposal, all process vessels at the facility would be subject to the standards if any emissions source at the facility emitted one of the paints and allied products manufacturing target HAP. [3] After consideration of public comments, we modified the scope of applicability of this final rule, and we made several changes to clarify the applicability provisions. The most significant change is that only process vessels that emit one or more of the target HAP are subject to the rule.

B. Standards and Compliance Requirements

We have made several changes to the standards for paints and allied products manufacturing. For the metal HAP standards, we have revised the requirement to conduct an initial visible emission test by changing the test method from Method 9 to Method 203C. In addition we have revised the opacity standard from 5 percent opacity to 10 percent opacity. We have also removed the requirement to conduct additional visible emissions tests every six months. Instead, we have added quarterly Method 22 visible emission observations.

We have also extended the initial particulate control device testing date from 60 days to 180 days from the compliance date for an existing source, and 180 days of start-up of a new system.

We have removed the requirement to cover all process tanks with a lid or cover. Instead, only process vessels that contain benzene or methylene chloride will be required to be covered. In addition, we have added a provision to allow operators to open any vessel only to the extent necessary for quality control testing and product sampling, addition of materials, or product removal.

[3] In this preamble, we use the term ''target HAP'' to mean the urban HAP for which the paints and allied products manufacturing source category is listed under section 112(c)(3). Those HAP are benzene, methylene chloride, and compounds of cadmium, chromium, lead, or nickel. Further, the regulations define ''materials containing HAP'' to mean a material containing any of the target HAP in amounts greater than or equal to 0.1 percent by weight, as shown in formulation data provided by the manufacturer or supplier. *See* 63.11607.

C. Reporting and Recordkeeping Requirements

We have revised § 63.11603, ''What are my notification, reporting, and recordkeeping requirements?'' of this final rule to revise the submittal dates for the Initial Notification of Applicability and Notification of Compliance Status reports. We have extended the initial notification of applicability from 120 days after publication of the final rule in the **Federal Register** to 180 days after publication of the final rule in the **Federal Register.**

D. Definitions

We have made several changes to the final rule definitions in § 63.11607, ''What definitions apply to this subpart?'', and have added definitions for other terms used in this final rule. We added definitions for construction, dry particulate control device, responsible official, and wet particulate control device. We have revised the definition of paints and allied products, paints and allied products manufacturing, and paints and allied products manufacturing process.

E. Other

We corrected several typographical errors that appeared in various sections of the proposed rule.

IV. Summary of Final Standards

A. Do these standards apply to my source?

This final rule (subpart CCCCCCC) applies to new or existing paints and allied products manufacturing operations which are area sources of one of the target hazardous air pollutants (HAP) and that process, use, or generate materials containing one or more of the following target HAP: Benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel. ''Material containing HAP'' is defined in the regulations as any material that contains benzene, methylene chloride, or compounds of cadmium, chromium, lead, or nickel, in amounts greater than or equal to 0.1 percent by weight, as shown by the manufacturer or supplier, such as in the Material Safety Data Sheet (MSDS) for the material.

In the proposed rule, we proposed that the affected source include the entire facility if the facility processes, uses, or generates any of the target HAP. Specifically, under the proposed rule, if the facility processes, uses, or generates any of the target HAP, then they would be required to control all HAP that is processed, used, or generated at the facility. In response to comments, we

have revised the final rule to define the affected source as only those processes that process, use, or generate the target HAP. In the proposed rule, we proposed that the affected source include the entire facility if the facility emitted any of the target HAP. Specifically, under the proposal, all paints and allied products manufacturing processes at the facility would be subject to the standards if any emissions source at the facility emitted one of the target HAP. In response to comments, we narrowed the scope of applicability of this final rule, and we made several changes to clarify the applicability provisions. The most significant change is that only those process units that emit one or more of the target HAP are subject to the rule. The final rule further specifies that each process vessel that emits one of the target HAP is subject only to requirements that apply to the same type of target HAP that triggered applicability, not requirements for all types of HAP. For example, a process vessel that uses only one or more target metal HAP (i.e., compounds of cadmium, chromium, lead, or nickel) is required to control all CAA section 112(b) metal HAP. Similarly, a process vessel that uses only target volatile HAP (i.e., benzene or methylene chloride) is required to control all CAA section 112(b) volatile HAP.

Paints and allied products manufacturing operations include the production of paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials, the intended use of which is to leave a dried film of solid material on a substrate. Typically, the manufacturing industries that produce these materials are described by SIC codes 285 or 289 and NAICS codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. Paints and allied products manufacturing does not include: (1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents; (2) the manufacture of electroplated and electroless metal films; (3) the manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and coatings; and (4) activities by end users of paints or allied products to ready those materials for application. Quality assurance and quality control laboratories are not considered part of a paints and allied products manufacturing process, as they were not part of the listed paints and allied products source category. Additionally, the standards do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA. Quality assurance and quality control laboratories and research and development facilities were inadvertently omitted from the proposal, but the final rule corrects this omission.

If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. When must I comply with these standards?

All existing area source facilities subject to this rule are required to comply with the rule requirements no later than December 3, 2012. New sources are required to comply with the rule requirements upon December 3, 2009 or upon startup of the facility, whichever is later.

C. What processes does this final rule address?

There are four general process operations common to the paints and allied products manufacturing source categories that emit one or more of the target HAP. These four process operations are: (1) Preassembly and premix, (2) pigment grinding, milling, and dispersing, (3) product finishing and blending, and (4) product filling and packaging.

For premix and assembly, the final rule addresses the target HAP emissions that are generated during the addition of pigments and other solid materials to the process or mixing vessels. The preassembly and premix step involves the collection of raw materials that will be used to produce the desired coating product. These materials are added to a high speed dispersion or mixing vessel. The types of raw materials that are used for solvent-based coatings include resins, organic solvents, plasticizers, dry pigment, and pigment extenders; water, ammonia, dispersant, pigment, and pigment extenders are used for water-based coatings.

The final rule addresses HAP emissions from pigment grinding, milling, and dispersing. Pigment grinding or milling entails the incorporation of the pigment into the paint or ink vehicle to yield fine particle dispersion. The three stages of this process include wetting, grinding, and dispersion, which may overlap in any grinding operation. The wetting agent, normally a surfactant, wets the pigment particles by displacing air, moisture, and gases that are adsorbed on the surface of the pigment particles. Grinding is the mechanical breakup and separation of pigment clusters into isolated particles and may be facilitated by the use of grinding media such as pebbles, balls, or beads. Finally, dispersion is the movement of wetted particles into the body of the liquid vehicle to produce a particle suspension.

For product finishing and blending, the final rule addresses the HAP emissions that occur during heat-up losses during operation of the mixers; surface evaporation during mixing and blending; and the addition of pigments and other solid materials to the process or mixing vessels.

For product filling and packaging, the final rule addresses HAP emissions from the addition of small amounts of pigments, solids, or liquids to achieve the required color or consistency of the final product.

D. What are the emissions control requirements?

The following is a description of the control requirements for the paints and allied products manufacturing process described in section IV.C above. The control requirements only apply when an operation is being performed at a process vessel that uses materials containing HAP. As stated earlier, the regulations define ''materials containing HAP'' as a material containing benzene, methylene chloride, or compounds of cadmium, chromium, lead, and/or nickel, in amounts greater than or equal to 0.1 percent by weight, as shown in formulation data provided by the manufacturer or supplier for the material, such as the Material Safety Data Sheet.[4] For example, an area source may have two process vessels, one containing tetrachloroethylene (which is not one of the target HAP) and the other containing methylene chloride, and, under this rule, only the process vessel containing methylene

[4] The CAA section 112(k) inventory was primarily based on the 1990 Toxics Release Inventory (TRI), and that is the case for the paints and allied products manufacturing area source category as well. The reporting requirements for the TRI do not include *de minimis* concentrations of toxic chemicals in mixtures, as reflected in the above concentration levels; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. *See* 40 CFR 372.38, Toxic Chemical Release Reporting: Community Right-To-Know (Reporting Requirements). Accordingly, the scope of the listed source category is limited to facilities using materials containing one or more of the target HAP in quantities greater than 0.1 percent.

chloride (one of the target volatile HAP) would be part of the affected source and as such, subject to the process vessel standards.

1. Standards for Metal HAP Emissions

This final rule requires owners or operators of all existing and new affected facilities to operate a particulate control device during the addition of pigments and other solids that contain compounds of cadmium, chromium, nickel, or lead, and during the grinding and milling of pigments and solids that contain compounds of cadmium, chromium, nickel, or lead.

Particulate control devices that vent to the atmosphere must be maintained such that visible emissions from the particulate control device shall not exceed 10 percent opacity when averaged over a six-minute period. Affected sources using particulate control devices that do not vent to the atmosphere are not subject to the requirements of this rule, as there are no emissions to the atmosphere.

2. Standards for Volatile HAP Emissions

This final rule requires new and existing affected sources to equip process and storage vessels that store or process materials containing benzene or methylene chloride with covers or lids. The covers or lids can be of solid or flexible construction, provided they do not warp or move around during the manufacturing process. The covers or lids must maintain contact along at least 90 percent of the vessel rim and must be maintained in good condition. Mixing vessels that process or store materials containing one or more of the target volatile HAP must be equipped with covers that completely cover the vessel, except for safe clearance of the mixer shaft. All vessels that store or process materials containing benzene or methylene chloride must be kept covered at all times, except for quality control testing and product sampling, addition of materials, material removal, or when the vessel is empty.

The final rule requires that leaks and spills of materials containing benzene or methylene chloride must be minimized and cleaned up as soon as practicable, but no longer than 1 hour from the time of detection. Rags or other materials that use a solvent containing benzene or methylene chloride for cleaning must be kept in a closed container. The closed container may contain a device that allows pressure relief but does not allow liquid solvent to drain from the container.

E. What are the initial compliance requirements?

To demonstrate initial compliance with this final rule, owners or operators of affected new or existing sources must certify that they have implemented all required control technologies and management practices and that all equipment associated with the processes will be properly operated and maintained. In addition, a visual emission test using EPA Method 203C is required to be performed on the particulate control device on or before the compliance date.

F. What are the continuous compliance requirements?

This rule requires owners and operators of affected facilities to inspect the particulate control device annually to check the structural integrity of the particulate control device, and to perform a visual emission test using EPA Method 22 on the particulate control device every 3 months. If visible emissions are observed for two minutes of the required 5 minute Method 22 observation period, a Method 203C (40 CFR part 51, appendix M) test must be conducted within 15 days of the time when visible emissions were observed. If the Method 203C test indicates an opacity greater than 10 percent, you must take corrective action and retest using Method 203C within 15 days. The owner/operator will continue to take corrective action and retest each 15 days until a Method 203C test indicates an opacity equal to or less than 10 percent. Failure to meet the 10 percent opacity standard is a deviation and must be reported in your annual compliance report along with the corrective actions taken.

G. What are the notification, recordkeeping, and reporting requirements?

New and existing affected sources are required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A). Each new source is required to submit an Initial Notification no later than 180 days after initial startup of the operations or June 1, 2010, whichever is later. Existing affected sources must submit the Initial Notification no later than June 1, 2010. Notification of Compliance Status reports are required to be submitted according to the requirements in 40 CFR 63.9 in the General Provisions no later than June 3, 2013 for existing sources, or no later than 180 days after initial startup, or by June 1, 2010, whichever is later for new sources.

The affected source is required to prepare an annual compliance certification report. The annual compliance certification report contains the company name and address, a statement signed by a responsible official that certifies the truth, accuracy, and completeness of the certification report, and a statement of whether the source has complied with all of the relevant standards and other requirements of this rule. If there are any deviations from the requirements of this subpart, the facility must submit this annual compliance certification report with any deviation reports prepared during the year. The deviation reports must describe the circumstance of the deviation and the corrective action taken.

Facilities are also required to maintain all records that demonstrate initial and continuous compliance with this final rule, including records of all required notifications and reports, with supporting documentation; and records showing compliance with management practices. Owners and operators must also maintain records of the following, if applicable: Date and results of the particulate control device inspections; date and results of all visual determinations of visible emissions, including any follow-up tests and corrective actions taken; and date and results of all visual determinations of emissions opacity, and corrective actions taken.

V. Summary of Comments and Responses

We received a total of 27 comments on the proposed NESHAP from industry representatives, trade associations, Federal and State agencies, and the general public during the public comment period. Sections V.A through V.F of this preamble provide responses to the significant public comments received on the proposed NESHAP.

A. Applicability

1. General Applicability

Comment: Several commenters believe that the proposed rule subjects all retail and commercial paints and allied products operations that add and mix pigments to pre-manufactured products per customer specifications to the requirements in this rule. The commenters believe that this was not the intent of the rule, as demonstrated by the discussion of the affected number of sources, and economic impacts of the rule. The commenters suggest that EPA revise its definitions of ''paints and allied products,'' ''paints and allied products manufacturing,'' and ''paints

and allied products manufacturing process'' to exclude operations that only add and mix small amounts of pigment per container of pre-manufactured paint or allied products for commercial or retail purchase per customer specification.

One commenter suggests that EPA refer to the language used in the major source miscellaneous coatings manufacturing rule (40 CFR part 63, subpart HHHHH), which clarified its intent to regulate the coatings manufacturers, not activities by end users to prepare or modify coatings in preparation for application.

Another commenter requests that the definitions clarify that the rule does not apply to raw material production, as some larger area source facilities will be co-located with such operations.

Response: In response to comments, we re-examined the record supporting the initial listing of the Paints and Allied Products Manufacturing source category. Based on our review of the record supporting that listing, we agree with the commenters that the source category that was listed did not include retail and commercial paints and allied products operations which add and mix pigments to pre-manufactured products per customer specifications. EPA's intent in the proposed rule was not to include the activities of end users, which include retail and commercial paints and allied products operations which add and mix pigments to pre-manufactured products per customer specifications, and we recognize that the definitions used in the proposal were confusing in this regard. In light of the scope of the listed source category and the confusion that resulted from some of the definitions in the proposed rule, we have revised the definitions of ''paints and allied products,'' ''paints and allied products manufacturing,'' and ''paints and allied products manufacturing process'' to exclude operations that add and mix pigments to pre-manufactured products and to clarify that only facilities that manufacture paints and allied products from raw materials, as described under NAICS 325510, 325520, 325910 and selected sectors under 325998, are covered by this rule. The revised definitions follow:

Paints and Allied Products Manufacturing means the production of paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials, the intended use of which is to leave a dried film of solid material on a substrate. Typically, the manufacturing processes that produce these materials are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. Paints and allied products manufacturing does not include:

(1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents;

(2) The manufacture of electroplated and electroless metal films;

(3) The manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and coatings; and

(4) Activities by end users of paints or allied products to ready those materials for application.

Paints and Allied Products Manufacturing Process means all the equipment which collectively functions to produce paints and allied products from raw materials A process may consist of one or more unit operations. For the purposes of this subpart, the manufacturing process includes any, all, or a combination of, weighing, blending, mixing, grinding, tinting, dilution, or other formulation. Cleaning operations, material storage and transfer, and piping are considered part of the manufacturing process. It does not cover activities by end users of paints or allied products to ready those materials for application. Quality assurance and quality control laboratories are not considered part of a paints and allied products manufacturing process.

In terms of the breadth of the rule's applicability, some manufacturing facilities may have co-located or affiliated operations which meet the definition of paints and allied products manufacturing, and to which this rule does apply.

2. Applicability Based on HAP Used/Emitted

Comment: Commenters note that the proposed rule would apply to paint and allied products manufacturing area sources that process, use, or generate one or more of the six target HAP: benzene, methylene chloride, cadmium compounds, chromium compounds, lead compounds, and nickel compounds. Commenters also note that these HAP are referred to as the ''target HAP'' for this regulation. Commenters further state that, under the proposed rule, once a facility is determined to be subject to the rule, the emission limitations and management practices then would apply to all processes at all times, regardless of whether any target HAP (or any HAP) was being processed, used, generated, or emitted. Commenters request that EPA limit applicability of the rule to those times when a process vessel is actually processing, using, generating, or emitting one or more of the target HAP.

One commenter supports EPA's decision to apply the standard to all HAP. The commenter notes that EPA has the discretion under § 112(d) of the Clean Air Act to issue standards for areas sources ''to reduce emissions of hazardous air pollutants,'' and EPA's discretion is not limited to only regulating only the target HAP in the area source program.

Several commenters request that EPA limit the rulemaking's applicability to those operations at a facility that are actually utilizing one of the target HAP. The commenters believe that EPA should revise the applicability language to make it clear that the rule only applies to processes with target HAP emissions at an affected source, as opposed to any operation at an affected source, regardless of whether or not the process involves one or more of the target HAP. One of the commenters notes that this approach is used in the Area Source Standards for Paint Stripping and Miscellaneous Surface Coating Operations and the Area Source Standards for Nine Metal Fabrication and Finishing Source Categories. Several of the commenters state that the intent of the area source regulations was to regulate the 30 Urban Air toxics, and EPA is significantly increasing the burden on industry, especially small businesses, by expanding the rule beyond the target HAP, without commensurate environmental benefit. One of the commenters requests that only the presence of one or more of the target metal HAP should trigger the requirements for other metal HAP, and that only the presence of benzene or methylene chloride should trigger the requirements for other volatile HAP emissions.

Response: Like the proposed rule, the final rule applies to any facility that performs paints and allied products manufacturing that is an area source of HAP emissions and processes, uses, or generates materials containing one or more of the target HAP: Benzene, methylene chloride, and compounds of cadmium, chromium, lead, and nickel.

To develop the emissions standards in today's rule, we identified the emission points that emit the target HAP and determined GACT for those emission sources. The proposed regulatory text required that these GACT requirements apply at all times, whether any of the target HAP was or was not being used.

However, the preamble to the proposed rule (74 FR 26147) stated that the requirements of the rule would apply when any operation is being performed that processes, uses, or generates any HAP. EPA intended to propose regulatory text that required that the rule's requirements apply when any operation is being performed that processes, uses, or generates any of the target HAP. The regulatory text in the final rule has been revised accordingly to state that the control requirements only apply when the facility is processing, using, or generating any of the target HAP.

The commenters requested that the GACT requirements only apply when the target HAP are being processed, used, or generated. They did not claim that EPA lacks the authority under § 112(d) of the Clean Air Act to regulate HAP other than the target HAP, but rather based their arguments on claims of potential burdens of expanding the rule beyond the target HAP. However, these commenters did not provide specific information regarding the potential additional burden to support these assertions. We believe there may be a minimal increase in the burden associated with controlling emissions in the instances when a non-target HAP is being used (without a target HAP also being present). Facilities that process, use, or generate one or more of the target HAP must have the required controls in place, and these same controls will control other metal and/or volatile HAP.

We did make changes in the final rule to clarify our original intent that the requirements apply only when a target HAP is processed, used, or generated. We also further refined this to specify that the requirement to keep process and storage vessels covered only applies when the vessel contains target volatile HAP.

Comment: Several commenters suggested that EPA include an applicability exemption for process tanks under a prescribed size. The commenters recommend an exemption for process tanks smaller than 250 gallons, both for consistency with the Miscellaneous Coatings Manufacturing Maximum Achievable Control Technology (MACT) rulemaking and to limit burden. One commenter stated that it is more difficult to install particulate controls on high dispersion process tanks that are less than 250 gallons and install covers on process tanks less than 250 gallons. In addition, if the 250 gallon threshold is not included, every ''process tank'' would need to be covered, including very small containers like 5 gallon containers and 55 gallons drums.

Another commenter noted that EPA has already determined in other Part 63 NESHAP regulations (such as the HON in subpart G container definition at § 63.111) and the RCRA Hazardous Waste Subpart CC regulations at 40 CFR 264/265.1080(b)(2) that containers of a capacity less than or equal to 0.1 cubic meters (m^3) produce insignificant emissions and thus are exempted from the regulations. Additionally, the commenter stated that the HAP mandated to be regulated should be specifically listed in order to avoid any confusion.

Response: From the permit information we obtained for the rulemaking, we found that 8 out of 30 facilities are required to cover storage tanks or process vessels that contain VOC or organic solvents to prevent vaporization of VOCs. In a separate study, the Washington State Department of Ecology found that the 18 facilities that they visited or surveyed used lids or covers on all vessels.[5] The survey also stated that the use of covers or lids is considered to be a standard practice by the paint manufacturing industry. Industry representatives also provided estimates that around 90–95 percent of facilities use covers on their process and storage tanks to prevent product loss; these data do not provide any information on tank size.

None of the information that we found limited the use of lids or covers to the size of the tank. Therefore, we believe it is appropriate to require the use of lids or covers on all process and storage tanks that contain one or more of the target HAP, regardless of the size of the tank. The commenters did not provide any information to explain why covering a process tank of less than 250 gallons is burdensome. The commenters also provided no information to support adopting different requirements for smaller process tanks, nor do they provide any information explaining that process tank covers for the smaller tanks are not generally available control technology. The volatile HAP to be controlled are listed at § 63.11599(3).

3. Pollution Prevention Alternative Exemption

Comment: The commenters stated that a facility should be able to ''opt out'' of this rule in the future if the facility eliminates the processing, use, production or generation of the target HAP; otherwise, there is no incentive for coatings manufacturers or their raw material suppliers to move away from these HAP. Additionally, several commenters stated that facilities that do reformulate or cease producing a certain product that subjected them to the rulemaking in the first place will be mandated to continue to operate costly and energy-consuming control equipment (e.g., particulate controls) for no environmental benefit. The facility's continued recordkeeping and reporting would be additional cost and burden.

One commenter believes that EPA's 1995 ''once in/always in'' policy applies to major sources subject to MACT standards and would not apply to this area source regulation. The commenter requested that EPA officially confirm that this policy does not apply to this final rulemaking and/or facilities that no longer use the target HAP after the date of implementation have the ability to opt-out of the rule.

Response: The comment concerning the ''once in/always in'' policy is not relevant to this rule. The regulated entities subject to this rule include the owner/operator of a facility that performs paints and allied products manufacturing is an area source of HAP emissions and processes, uses, or generates materials containing the following target HAP: Benzene, methylene chloride, and compounds of cadmium, chromium, lead, or nickel. If a facility that was covered under the rule discontinues processing, using, or generating the target HAP through pollution prevention practices or otherwise, then that facility is no longer covered by the rule. However, should the same facility reinstate processing, using or generating the target HAP, it would once again be subject to the requirements of this rule, including notification, recordkeeping, and reporting. Additionally, terminating use of the target HAP would require submittal of a report pursuant to § 63.9(j) and also require maintenance of the record as required by § 63.1(b)(3).

B. Compliance/Implementation Dates

Comment: Two commenters state that § 63.11603(a)(1) requires existing sources to notify EPA within 60 days of publication of the final rule, and for new sources within 60 days of startup. The commenters state that the notification of Compliance Status found in § 63.11603(a)(2) requires that all sources report on their compliance status within 120 days of their respective compliance date. The commenters recommended that the deadlines be changed to 180 days in all cases, to provide time for small sources to comply and to be consistent with other similar Federal rules.

[5] Paint and Coatings Manufacturing Sector, Pollution Prevention Assessment and Guidance, Washington State Department of Ecology, Hazardous Waste and Toxics Reduction Program, Publication #98–410, Revised November 2002.

Response: We agree with the commenters that because most of the affected facilities are small businesses, and some might be complying with EPA regulations for the first time, they should be provided additional time to comply with the requirements. Per the General Provisions, we have pushed back the initial notification date to 120 days from the date of publication of the final rule. The compliance date is 180 days from the date of publication of the final rule.

C. De Minimis Thresholds and Subcategorization

1. De Minimis Thresholds

Comment: Several commenters suggest that EPA exempt small paints and allied products manufacturing facilities from the final regulation. The commenters propose using a de minimis level of 100 lbs/year of one or more of the target HAP. The commenters claim that sources with lower emissions levels were not included in the 1990 baseline emissions inventory. Another commenter suggests a mass-based de minimis level of 2.0 Megagrams (2.2 tons per year) for target HAP that are processed, used, produced, or generated. Alternatively, commenters suggested subcategorization of the source category into ''small emission'' and ''large emission'' facilities based on a 100 lb/year HAP actual emission threshold, and then exempting the small emission subcategory from all requirements.

The commenters claim that EPA has provided de minimis exemptions in previous area source rules, including Clay Ceramics, Glass Manufacturing, and the Benzene NESHAP for Waste Operations. One commenter states that precedence for a de minimis threshold (beyond the Occupational Safety and Health Administration (OSHA) de minimis threshold) is established in earlier NESHAP rulemakings, where EPA determined that the use of coatings containing urban air toxics below certain thresholds do not negatively impact human health and the environment. Specifically, the commenter notes that in the Clay Manufacturing Area Source Rule, EPA included an applicability de minimis based on the argument that emissions from facilities with annual production of less than 50 tons/year were not included in the 1990 baseline emissions inventory that was used in the basis for the area source category listing. The commenter states that only those above the 50 ton/year threshold were in the basis for listing, so only those facilities are covered by the rule. The commenter believes the same is true for the paints and allied products manufacturing rule. Other commenters stated that state rules for paints and allied products manufacturing contain de minimis thresholds that exclude lower volume production facilities, waterborne production facilities, and small process tanks. The commenters state that since EPA can look to state regulations as part of the GACT analysis, EPA has the authority to adopt a 100 lb/year emission de minimis threshold. Several commenters believe that without a de minimis emission threshold, a facility that relies on a supplier MSDS may find itself out of compliance if, for example, a supplier reports a new trace metal constituent on the MSDS. The commenters note that the metals of concern are often contaminants in purchased raw materials. The commenters note that if the supplier's raw material source changes and the supplier's analysis begins to show higher traces of a metal, a manufacturer would be out of compliance upon receiving this new MSDS, even though no reportable emissions of the metal have occurred.

Response: EPA does not believe it is appropriate to establish a de minimis threshold exempting sources emitting less than 100 lb/year of the target HAP, or sources processing, using, or producing less than 2.0 Megagrams (2.2 tons per year) of the target HAP from the final regulations. Section 112(c)(3) requires that EPA list categories or subcategories of area sources sufficient to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP that present the greatest threat to public health in the largest number of urban areas are regulated. EPA listed the Paints and Allied Products Manufacturing area source category in 2002 as one of the categories needed to ensure that 90 percent of such area source emissions are regulated. The listed source category included sources emitting less than 100 lbs/year of the target HAP for the Paints and Allied Products Manufacturing source category. Therefore, were EPA to exempt those sources from regulation, the statutory requirement to regulate area sources representing 90 percent of area source emissions of the urban HAP would not be met. For this reason, EPA does not believe a de minimis exemption would be appropriate. The rules commenters cite where de minimis thresholds were established were issued under section 112(d)(2) for major sources (i.e., MACT standards), not for area sources under section 112(d)(5). Therefore, those major source categories were not part of the list of source categories established to meet EPA's obligation under section 112(c)(3). Further, commenters' claims that EPA established de minimis exemptions in several area source rules are incorrect. In these rules, after examining the record on which the initial listing was based, EPA clarified the scope of the listed source category. Contrary to commenters' assertion, EPA did not create any exemptions in those rules. For example, in the case of Clay Ceramics, EPA stated:

> ''With this action, we are also clarifying that artisan potters, small ceramics studios, noncommercial entities, and schools and universities with ceramic arts programs, which typically have annual production rates of 45 Mg/yr (50 tpy) or less, are not a part of the source category listed pursuant to section 112(c)(3) and (k)(3)(B), and are, therefore, not covered by this area source standard. Urban HAP emissions from these facilities were not included in the 1990 baseline emissions inventory that was used as the basis for the area source category listing.''

EPA set standards in each of the area source rules cited above for all sources that were part of the listed source category to meet the statutory obligation in section 112(d)(3) to regulate sources representing 90 percent of area source emissions of the urban HAP. EPA also notes that the commenter's reference to state law requirements is irrelevant. EPA is required to establish area source standards pursuant to the requirements of section 112(d), and cannot create exemptions to those standards based on state law requirements.

Finally, commenters are concerned that without a de minimis emission threshold, a facility that relies on a MSDS may find itself out of compliance if a raw material source changes and the supplier's analysis begins to show higher traces of a metal, and those higher levels are not reflected on the MSDS. The CAA section 112(k) inventory was primarily based on the 1990 Toxics Release Inventory (TRI), and that is the case for the paints and allied products manufacturing area source category as well. The reporting requirements for the TRI do not require reporting of de minimis concentrations of toxic chemicals in mixtures, as reflected in the above concentration levels; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. *See* 40 CFR 372.38, Toxic Chemical Release Reporting: Community Right-To-Know (Reporting Requirements). Accordingly, the scope of the listed source category is limited

to facilities using materials containing one or more of the target HAP in quantities greater than 0.1 percent.

In addition, EPA believes the regulations as proposed adequately address the commenters' concern regarding reliance on the MSDS. For facilities that rely on a supplier MSDS, the manufacturer would only be out of compliance if the materials containing one or more of the target HAP greater than 0.1 percent are used in the process, without the required controls in place. Therefore, a manufacturer would be required to submit the appropriate forms if the manufacturer intends to use the material containing HAP greater than 0.1 percent by weight in the manufacturing process. Commenters provide no evidence to indicate that MSDS from suppliers will be inaccurate and will result in noncompliance with the regulation.

2. Subcategorization

Comment: One commenter states that the legal basis for EPA's subcategorization of the Paints and Allied Products Manufacturing area source category into large and small facilities is well established. The commenter asserts that section 112(d)(1) of the Clean Air Act provides that EPA ''may distinguish among classes, types, and sizes within a source category or subcategory in establishing such standards.'' 42 U.S.C. 7412(d)(1). The commenter also notes that the Clean Air Act supports an EPA determination that work practice standards and general management practices constitute GACT for small Paints and Allied Products Manufacturing sources.

According to the commenter, a review of the commenter's internal data show significant differences between larger and smaller facilities based on production levels, matching EPA estimates that the metal HAP emissions for a typical ''small emission'' area source facility are only about 10 percent of the level of emissions for a typical ''large emission'' area source facility.

The commenter states that in the area source rule for Chemical Manufacturing, EPA evaluated impacts for two groupings or subcategories for metal HAP and considered a threshold because of an observed difference in operation depending on the emission rate. The commenter further notes that EPA realized that there was a difference between facilities with higher HAP emissions that manufactured products containing HAP as an intended part of the product, and a majority of facilities with low emissions where the HAP originated from impurities in raw materials. The commenter believes there is a similar observed difference in operations depending on the emission rate for the paints and allied products manufacturing industry as well. The commenter states that facilities with actual emissions of paints and allied products manufacturing metal HAP (cadmium, chromium, nickel and lead) above 100 lb/yr produce products that contain the HAP as an intended part of the product. The commenter also asserts that EPA has the discretion to create subcategories of area sources, and that EPA should do so in the paints and allied products manufacturing rule based on cost considerations, as well as differing industry practices and processes.

The commenter claims that two of the management practices EPA proposed to identify as GACT are used frequently: (1) Sweeping/cleaning, and (2) purchasing only materials that are free (to the greatest extent possible) of HAP metals. Of the particulate matter (PM) control technologies EPA proposed as GACT, the commenter claims that large paints and allied products manufacturing facilities frequently use baghouses to reduce PM/HAP emissions, while smaller (less than 100 lb/year emission) facilities most often do not. The commenter also states that the consideration of costs and economic impacts is especially important for determining GACT for small paints and allied products manufacturing facilities because, given their extremely low level of HAP emissions, requiring additional controls would result in only marginal reductions in emissions at very high costs for modest incremental improvement in control.

Response: EPA does not believe that subcategories in the Paints and Allied Products Manufacturing area source category are warranted. In particular, EPA has no information demonstrating that paints and allied products manufacturing facilities that emit more than 100 lbs/year of HAP are of a different class, type, or size than similar facilities with lower emissions. In contrast, in the Chemical Manufacturing Area Source rule, EPA had information to support a conclusion that facilities above a certain total resource effectiveness value had different continuous process vents than facilities below that TRE value. *See* 73 FR 58352, 58364–65 (Oct. 6, 2008). We do not have any such information for the Paints and Allied Products Manufacturing source category. Absent such a demonstration, the Agency has no basis to support subcategorizing facilities with higher emissions from those with lower emissions. Further, while the commenters assert that larger facilities use baghouses while smaller ones do not, the commenter provided no data or information to support this assertion, and EPA has no data or information to substantiate this claim.

D. Emission Standards and Management Practices

1. Generally Available Control Technology

Comment: One commenter stated that, as described in § 112(k)(1), the purpose of the area source program is to ''achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources * * *.'' 42 U.S.C. 7412(k)(1). For area sources, EPA may set either MACT standards, or alternative standards (sometimes referred to as ''GACT'' standards) that ''provide for the use of generally available control technologies or management practices * * * to reduce emissions of hazardous air pollutants.'' 42 U.S.C. 7412(d)(5).

The commenter stated that EPA provides no explanation for its decision to issue GACT standards instead of MACT standards for the Paints and Allied Products Manufacturing area source category.

Response: As the commenter recognizes, in CAA section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, CAA section 112(d)(5), which is entitled ''Alternative standard for area sources,'' provides:

> With respect *only* to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator *may, in lieu of* the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

See CAA section 112(d)(5) (*Emphasis added*).

There are two critical aspects to CAA section 112(d)(5). First, CAA section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to CAA section 112(c). The commenter does not dispute that EPA listed the area source category noted above pursuant to CAA section 112(c)(3). Second, CAA section 112(d)(5) provides that, for area sources listed pursuant to CAA section 112(c), EPA ''*may, in lieu of*'' the authorities provided in CAA section 112(d)(2) and 112(f), elect to promulgate standards pursuant to CAA section 112(d)(5). CAA

Section 112(d)(2) provides that emission standards established under that provision ''require the maximum degree of reduction in emissions'' of HAP (also known as MACT). CAA section 112(d)(3), in turn, defines what constitutes the ''maximum degree of reduction in emissions'' for new and existing sources. *See* CAA section 112(d)(3).[6] Webster's dictionary defines the phrase ''in lieu of'' to mean ''in the place of'' or ''instead of.'' See Webster's II New Riverside University (1994). Thus, CAA section 112(d)(5) authorizes EPA to promulgate standards under CAA section 112(d)(5) that provide for the use of GACT, *instead of* issuing MACT standards pursuant to CAA section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under CAA section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to CAA section 112(c), which is the case here.[7]

We disagree with the commenter's assertion that we must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. Had Congress intended that EPA first conduct a MACT analysis for each area source category, Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c)(3), and that is precisely what EPA has done in this rulemaking.

Although EPA need not justify its exercise of discretion in choosing to issue a GACT standard for an area source listed pursuant to section 112(c)(3), EPA still must have a reasoned basis for the GACT determination for the particular area source category. The legislative history supporting section 112(d)(5) provides that GACT is to encompass:

> ''* * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.''

The discussion in the Senate report clearly provides that EPA may consider costs in determining what constitutes GACT for the area source category. Congress plainly recognized that area sources differ from major sources, which is why Congress allowed EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not allow that consideration in setting MACT floors for major sources pursuant to section 112(d)(3). This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states, i.e., provide EPA the authority to issue ''alternative standards for area sources.''

Notwithstanding the commenter's claim, EPA properly issued standards for the area source categories at issue here under section 112(d)(5), and in doing so provided a reasoned basis for its selection of GACT for these area source categories. As explained in the proposed rule, EPA evaluated the control technologies and management practices that reduce HAP emissions at paints and allied products manufacturing facilities, including those at both major and area sources. In its evaluation, EPA used information on pollution prevention from industry trade associations, and reviewed operating permits to identify the emission controls and management practices that are currently used to control volatile and particulate HAP emissions. We also considered technologies and practices at major and area sources in similar categories.

Finally, even though not required, EPA did provide a rationale for why it set a GACT standard in the proposed rule. In the proposal, we explained that the facilities in the source categories at issue here are already well controlled for the urban HAP for which the source category was listed pursuant to section 112(c)(3). Consideration of costs and economic impacts proves especially important for the well-controlled area sources at issue in this final action. Given the current, well-controlled emission levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for modest incremental improvement in control for the area source category.

2. Metal HAP Standards

Comment: One commenter states that although particulate control devices are generally available, EPA has not adequately supported its proposal to set an opacity standard rather than a particulate matter standard. The commenter notes that EPA acknowledged that most of the State operating permits for facilities in this category impose a ''concentration or mass emission particulate limit that requires testing using an appropriate particulate test method, in most cases EPA Method 5.'' The commenter says that EPA rejected this widespread approach of a concentration or mass emission limit, instead adopting opacity as a surrogate for assessing mass emissions. The commenter states that EPA failed to demonstrate that the use of opacity as a surrogate is sufficient to achieve the levels of reduction that are already imposed by the State operating permits that rely on particulate testing. The commenter says that EPA's reliance on a 1991 study of benefits of opacity monitors applied to Portland Cement Kilns was unpersuasive. The commenter also notes that in the recently proposed NESHAP for the Portland Cement Manufacturing Industry, EPA rejected the use of an opacity standard, stating that ''we do not believe that opacity is an accurate indicator of compliance with the proposed PM emissions limit.''

Another commenter notes that there is no definition of capture or control efficiency in the proposed rule. The commenter recommends that EPA consider implementing capture and control system efficiencies parallel to those in the NESHAP for Nine Metal Fabrication and Finishing Sources (40 CFR part 63, subpart XXXXXX). In this rule, the commenter states that the term ''adequate emissions capture methods'' is defined in § 63.11522 to include ''* * * drawing greater than 85 percent of the airborne dust generated from the process into the control device.'' The commenter continues by saying that the Metal Fabrication and Finishing NESHAP requires spray paint booths to be fitted with PM filter technology that is ''* * * demonstrated to achieve at least 98 percent capture. * * *''

Response: As the commenter pointed out, particulate control devices were determined to be GACT for the control of the particulate HAP emissions. Based on the existing operating permit

[6] Specifically, CAA section 112(d)(3) sets the minimum degree of emission reduction that MACT standards must achieve, which is known as the MACT floor. For new sources, the degree of emission reduction shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, and for existing sources, the degree of emission reduction shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for which the Administrator has emissions information. CAA Section 112(d)(2) directs EPA to consider whether more stringent emission reductions (so called beyond-the-floor limits) are technologically achievable considering, among other things, the cost of achieving the emission reduction.

[7] CAA Section 112(d)(5) also references CAA section 112(f). See CAA section 112(f)(5) (entitled ''Area Sources'' and providing that EPA is not required to conduct a review or promulgate standards under CAA section 112(f) for any area source category or subcategory listed pursuant to CAA section 112(c)(3), and for which an emission standard is issued pursuant to CAA section 112(d)(5)).

requirements for paints and allied products manufacturing, we found a variety of formats and units, e.g., percent opacity, allowable PM or PM_{10} emission rates (pounds per hour or tons per year), and outlet concentrations (grains per dry standard cubic foot (gr/dscf)). We evaluated GACT for these format options and determined that an opacity limit was the most appropriate selection. As discussed below, there are cost and technical issues associated with demonstrating compliance with a PM numerical emission limit or a percent reduction standard, such that they do not constitute GACT for this source category.

As was stated in the proposal, we had concerns with the economic impact of particulate matter testing on the affected facilities, many being small businesses. A typical EPA Method 5 PM emissions test used for an emission limit or a percent reduction standard would cost between $3,000 and $10,000, while the cost of performing a Method 203C test is approximately $2,000, assuming an off-site contractor conducts the test.[8] In addition, the manufacture of paints and allied products is a batch process. The addition of pigments and solids, when the particulate control device would need to operated, can be completed in minutes, whereas the typical Method 5 test is run for sixty minutes. This presents technical issues with stopping and starting the Method 5 test method in order to capture a representative sample of the particulate emissions from the particulate control device during the addition of pigments and solids. Based on these cost and technical issues, we determined that an opacity standard would minimize the economic burden on the facilities covered by this rule while still ensuring that the particulate control device is well-designed and operated.

EPA's statements in the May 6, 2009 proposed amendments for the Portland Cement NESHAP (74 FR 211360) are not relevant here. Our statements in that proposal were in relation to the use of an alternative opacity standard to demonstrate compliance with a numeric PM limit. In contrast, in the Paints and Allied Products Manufacturing area source NESHAP the opacity limit is not used to demonstrate compliance with a numeric PM limit. The opacity limit established in this rule is a standard and not a surrogate for particulate matter. The statements in the Portland Cement proposal did not question the use of an opacity limit for the specific purpose for which EPA is adopting such a limit in today's action. Therefore, we believe our decision to establish GACT as the requirement to capture and route PM emissions to a control device that achieves a specified opacity is warranted. This format is retained in the final rule.

In summary, we believe the requirement to capture and route PM emissions to a control device that achieves a specified opacity limit is GACT. This technology is generally available, and opacity is a reasonable and effective means of ensuring that the control device is functioning correctly and achieving emission reductions.

Comment: EPA proposed that new and affected sources must capture particulate emissions and route them to a particulate control device during the addition of pigments and other solids and during the grinding and milling of solids. Two commenters agree with EPA that, after the addition processes, the pigments and associated metal HAP are in solution and emissions are minimal. Two commenters question whether particulate controls are needed during the grinding and milling stage, which occurs after the addition process when the pigments are in solution. One of the commenters notes that often grinding and milling equipment is fully enclosed, and there are typically no HAP emissions from the process. Two commenters suggest that particulate controls only be required when pigments and solids are added to the high speed dispersion tanks.

Response: There are a number of different milling and grinding methods and equipment that are used in the paints and allied products manufacturing industry. As the commenters note, many grinding and milling processes are fully enclosed and typically do not emit HAP from this process. In addition, there are minimal HAP emissions from the grinding and milling processes that occur when the pigments are in solution. Therefore, the final rule has been revised to provide three additional compliance options other than the use of a particulate control device. A particulate control device must be used during the addition of dry pigments or other dry materials that contain HAP to the grinding and milling equipment. However, the use of pigments or materials that contain HAP in paste, slurry, or liquid form instead of in dry form is an alternative means of compliance for this area source rule. In addition, fully enclosing the grinding and milling equipment is a second alternative means of compliance, in lieu of using a particulate control device. In addition, the requirements of the rule are satisfied if the pigments and solids that contain HAP in the grinding and milling equipment are in solution. These revisions do not change the intent of the rule, which is to reduce HAP emissions; in the case of each of these revisions, minimal HAP are emitted. In other words, we are not requiring use of a particulate control device during periods when alternative compliance methods will ensure that particulate emissions will be controlled. Each of these compliance alternatives will achieve at least as much reduction of emissions of the target HAP as will use of a particulate control device. Therefore, we believe that these revisions address the commenters' concerns because use of a particulate control device is not required if a facility does not have any metal HAP emissions, whether it is because the metal HAP is in paste, liquid, or slurry form during grinding and milling or because a facility is not venting emissions to the atmosphere.

We agree with the commenter that particulate controls should be used during the addition of solid materials that contain HAP to high speed dispersion.

Comment: Several commenters object to the 5 percent opacity limit. One of the commenters states that most paint facilities with particulate controls do not have opacity limits, and for those facilities that do, the existing limits are not as stringent as the proposed 5 percent opacity limit. Based on the operating permit information in the docket, the commenter believes that EPA's proposal of 5 percent is arbitrary and indicated that based on real-world experiences; they stated that 30 percent opacity is more realistic. Two of the commenters note that only three of the 44 facilities evaluated for this rulemaking had a 5 percent opacity requirement. The commenters indicate that the remaining facilities have opacity requirements of 20 percent or greater. Given these facts, the two commenters believe that an opacity standard of 20 percent would be more in line with what is intended by GACT. One commenter reviewed the 44 operating permits in the docket for this rulemaking and found that only 3 had a 5 percent opacity limit; 11 had a 20 percent limit, 2 had 30 percent limit, 13 had 40 percent limit, and 2 had an observed or no opacity limit. The commenter states that since this rule is governed by GACT, EPA is obligated to determine the control and work practices that are most commonly used or that are most prevalent. The commenter maintains that EPA has not

[8] Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities, September 15, 2008.

appropriately set the standard, and that GACT would be an opacity level of 30 percent. In addition, the commenter states that as most of the affected sources under this rulemaking are small businesses, EPA should not maintain an opacity emissions limit requirement in the final rulemaking. However, the commenter says that if EPA does decide to codify an opacity emissions level, it be no less than 30 percent.

Response: The commenter's statement that GACT must be based on the control technologies or emission limitations of the majority is incorrect. Rather, GACT reflects what is generally available, and a control technology may be generally available even if a majority of sources are not currently using it. However, in the case of paints and allied products manufacturing, we found that the use of particulate control devices is a common practice; the permits we obtained indicated that 79 percent of the facilities were currently equipped with a particulate control device.

We disagree with the commenter's interpretation of the opacity limitations in the permit data. The majority of opacity limitations in the permits are general opacity limits that are intended to limit the amount of fugitive emissions that are emitted to the atmosphere from an industrial facility. These fugitive emissions include road dust, storage pile and other non-process emissions from an industrial facility. We believe that many of these opacity limits in the permits are not intended to limit the emissions from a particulate control device. To determine an appropriate opacity limit for this rule, we reviewed documents related to opacity and particulate control devices. Based on this review, we concluded that the opacity from a properly operated particulate control device would be zero or near zero. Therefore, we proposed a 5 percent opacity standard for the particulate control device.

We selected an opacity standard because opacity provides an indication of the concentration of particulates leaving an exhaust stack. The more particulate matter that is passed through the exhaust, the more light will be blocked, and, as a result, a higher opacity percentage is observed. The documents that we reviewed determined that in many cases a properly maintained particulate control device could achieve zero or near zero opacity. However, many of these measurements were determined using a continuous opacity monitor system (COMS). For this rule, we believe all of the facilities will measure opacity using a trained observer, who assigns opacity readings in 5 percent increments. The trained observer is certified to determine the opacity with a positive error of less than 7.5 percent opacity, and to observe 95 percent of the readings with a positive error of less than 5 percent opacity. To take into account this observer error, we have revised the final opacity limit to be less than 10 percent opacity when averaged over a six minute period.

3. Volatile HAP Standards

Comment: Three commenters state that operators need to open nearly every process or storage tank at some time for quality control testing, adding of materials or removal of product. Therefore, consistent with the Miscellaneous Coatings Manufacturing MACT (MCM), one commenter requests that EPA revise the regulation such that operators are allowed to open any vessel, be it mixing, process, or storage, for quality control testing and sampling of the product, addition of materials, or removal of product from the vessel. One commenter notes that the proposed rule requires that process and storage vessels must be kept covered when not in use. The commenter notes that EPA provided an exception during the manufacturing process to allow for quality control or during the addition of pigments. The commenter recommends that a similar exception be provided to gain access to process and storage vessels for emptying, cleaning, and maintenance. One commenter states that some of their vessels are cleaned manually, and therefore covers cannot be maintained over the vessel at all times. The commenters subsequently believe that an exemption needs to be added to the final rule for inspection and/or cleaning of the process vessels.

Response: In the proposed rule, we recognized certain situations during which process and storage vessels need to be opened. In establishing the GACT for this area source, we did not include other necessary actions. As such, we have amended the final rule so that operators may open any vessel necessary for quality control testing and product sampling, addition of materials, or product removal. We did not include maintenance, because we believe that maintenance of the process vessel should be performed when the process vessel is empty. We have also revised the regulations to only require lids or covers on process or storage vessels that contain benzene or methylene chloride. Process or storage vessels that do not contain benzene or methylene chloride, and process or storage vessels that are empty, are not required to have covers or lids.

Comment: Numerous commenters believe the proposed vessel cover requirements are nearly impossible to institute both from a compliance and enforcement standpoint. Many of the commenters believe that it is nearly impossible to confirm that a lid or cover touches at least 90 percent of the vessel rim at any given time. Further, states a commenter, if a cover is constructed from a flexible material, it will most likely move around during the manufacturing process. The commenter continues that solid lids may ''move around,'' and/or warp over time. The commenter notes that only one of the State permits in the docket had this requirement and that this should not be considered GACT. Another commenter believes that the plywood covers/lids that EPA used to estimate costs for this rule would probably not meet this standard, as plywood may warp over time. Therefore, the commenters suggest that this requirement be deleted.

Response: The 90 percent cover requirement is intended to ensure that the lid or cover properly fits on the process vessel that contains the target HAP. The 90 percent cover requirement can be calculated by subtracting the length of any visible gaps from the circumference of the process vessel, and dividing this number by the circumference of the process vessel. We believe this requirement also addresses the issue of warping of the cover over time, because if the cover warps or moves around so that the vessel is not meeting the 90 percent coverage requirement, then the cover should be replaced in order to effectively control the HAP emissions. We understand that the cover may move around during the manufacturing process; however we believe the 90 percent cover requirement provides the best guidance for covering a process vessel that contains HAP. It ensures that HAP emissions are controlled, but provides some flexibility (i.e., as much as ten percent of the circumference of the lid need not be in contact with the cover) to accommodate movement of the covers that may occur during the manufacturing process.

Further, the 90 percent cover requirement is consistent with the standard procedures EPA has observed at existing paints and allied product manufacturing facilities. Some facilities are subject to similar 90 percent cover requirements under state or local regulations (for example, San Diego County). Based on our data, nearly all paints and allied product manufacturing facilities use lids on process vessels to prevent loss of product; this makes good business sense. Lid options include

tight-fitting stainless steel lids, elasticized plastic ''shower caps,'' and plywood covers. The 90 percent cover requirement is designed to remove any uncertainty about whether a vessel is adequately covered, for both the facility manager and the enforcement personnel. Therefore, the 90 percent cover requirement is included in the final rule.

E. Testing, Monitoring, and Inspection Requirements

1. Visual Emissions Requirement

Comment: Several commenters state that EPA Method 9 is burdensome. One commenter suggests that EPA allow for an alternative or modification to Method 9 that has been widely implemented across the country. Two commenters state that the area source NESHAP requirements for the Nine Metal Fabrication and Finishing Sources allow facilities to utilize EPA Method 22 in lieu of EPA Method 9 if no visible emissions are observed. One commenter believes that it is highly unlikely there would be visible emissions from a facility that uses a particulate control device, and requiring EPA Method 22 for periodic monitoring should be more than adequate for this source category. One commenter states that other methods use observation and reporting techniques very similar to Method 9, except that an uncertified observer would be permitted to make an initial determination of any visible emission. The commenter continues, stating that if a visible emission is identified, then corrective measures must be taken. The commenter notes that if more than a trace of visible emissions persists after maintenance has been completed, the facility must either determine whether the emission limit is being exceeded using a certified observer, or shut down the process. The commenter says that this approach is currently being used by their facility and suggests that EPA include this method in the final rulemaking. One commenter believes that a simple evaluation of visible emissions coupled with the pressure drop monitoring is adequate to monitor the ongoing proper operation of the add-on dry PM control device. Another commenter suggests that EPA provide an alternative to the formal Method 9 observation by allowing the owner/operator to conduct a general visible emission observation once per calendar quarter. The commenter says that if the owner/operator does observe any visible emissions during the quarterly observations, then the owner/operator should be allowed to address the situation causing the visible emissions. The commenter requests that if the problem persists for more than 24 hours, then the owner/operator should treat the observation as a deviation, or they can have the option to conduct a formal opacity test using a trained Method 9 observer.

Response: We appreciate the basic concerns of the commenters with regard to Method 9, although we have not elected to incorporate the specific suggestions made. In the final rule, we have changed the requirement, which now reads that an initial Method 203C test must be conducted to demonstrate compliance with a 10 percent opacity limit. Upon re-evaluation of the data and actual facility conditions, we determined that Method 203C better characterizes the emissions from the paints and allied product manufacturing operations. The time in which the emissions are present are significantly shorter than the thirty-minute visual inspection of Method 9. Method 203C is similar to Method 9 in training; however, Method 203C specifically allows for these short time limits with a one-minute average.

We have also removed the requirement to conduct additional Method 9 tests every six months. In place of these semi-annual Method 9 tests, the final rule requires that a Method 22 visible emissions observation be conducted once per quarter. If this observation detects visible emissions for six minutes of the required 15 minute observation period, then a Method 203C test is required within one week. If the Method 203C test then detects an opacity greater than 10 percent, the corrective action and retesting within 15 days requirement that was in the proposed rule would apply. This information must also be included in the annual report. We believe that Method 22 provides a comparable approach to ensure that any emission control equipment is operating properly and HAP emissions are reduced. Method 22 is used to ensure the process and any emission control equipment is operating properly and is not generating excess emissions. Method 22 is comparable to Method 203C because both methods use the human eye to determine if visible emissions are observed from an industrial activity. Therefore, we believe that this approach reduces the burden of the semi-annual Method 9 testing that the commenters were concerned about, while also ensuring that the control devices are operating properly.

Comment: Three commenters have suggestions related to the proposed inspection requirements. One of the commenters agrees that wet and dry PM control systems require initial and ongoing system integrity inspections as well as integrity inspections after each incidence of maintenance or repair. The commenter believes that these inspections are necessary to assure the successful ongoing capture and control of the PM emissions from paint manufacturing. However, the commenter states that the exact frequency, extent, and nature of these inspections should be defined by the coatings manufacturer in a written plan with which they should comply; the elements of the plan should be clearly established in the rule. The commenter recommends that the hood and flexible ductwork portion of the system be subject to informal inspections each week of use while the rigid portion of the ductwork be subject to annual inspections, or to inspection after any maintenance or repair work is performed on the duct system. The commenter recommends that initial corrective action should be immediately undertaken to mitigate any problems when system integrity is compromised and the identified problem fully corrected and documented within 15 days of first discovery. Two commenters believe that a weekly inspection of the particulate control device is not practical. A commenter states that because ductwork leaks under a vacuum cannot be visually detected, weekly visual leak inspections of dry particulate control device ductwork should not be required. In addition, the commenter notes that EPA has historically exempted the inspection of ductwork as excessive. The commenter states that several MACT rules require only annual inspection of ductwork. One commenter believes that the requirement should be replaced with a standard condition for proper operation and maintenance in accordance with the manufacturer's recommendations.

For dry PM control devices, one commenter recommends that the pressure drop across the system be monitored continuously using some type of manometer or pressure drop gauge to verify that the pressure drop is maintained within the range recommended by the manufacturer of the control device, which includes considerations based on the filter media employed, the method of filter media cleaning employed (if any), and the loading of the effluent stream being controlled. The commenter believes that wet PM control systems should be inspected on a frequency recommended by the control system manufacturer, and the frequency as well as the parameters to be monitored should be clearly

defined in a written management plan developed and implemented by the coatings manufacturer employing the system. The commenter says that this graduated type of approach to inspection frequency and the management plan requirement to define the details of the inspection parameters as proposed in the preceding paragraphs has been used in the area source NESHAP for Nine Metal Fabrication and Finishing Sources. The commenter states that this approach would provide a viable means to both assure ongoing compliance while minimizing the burden of compliance on the source.

Response: We believe that it is important that regular inspections be conducted to ensure that the integrity of both the capture system and the control device is maintained, and we agree with the commenters in regard to the inspections of the rigid ductwork. Therefore, we have clarified in the final rule that the rigid, stationary portions of the ductwork only need to be inspected annually. Because the particulate control system operates infrequently, we believe annual inspections of the rigid, stationary ductwork is sufficient to ensure the integrity of the particulate control system. However, we do believe that inspection of flexible ductwork needs to be conducted more frequently. Therefore, we retained the weekly inspection requirement for hoods and flexible ductwork in the final rule. We do not agree with the one commenter who states that the best approach is to establish the inspection frequency in site-specific plans. Site-specific plans create additional reporting burdens for small businesses. In addition, site-specific plans may not provide the periodic inspections that are needed to ensure that the particulate control device is operating properly. Therefore, we believe that the revised inspections will provide the insurance that the particulate control device is operating properly, while reducing the burden on the facility.

We agree that continuous monitoring of pressure drop can be used to ensure that the control system is operating properly; however, we also believe that the combination of the system integrity inspections and the visual emissions monitoring (discussed below) are sufficient for the source category and at a lower cost than installing, calibrating, and operating a continuous monitoring system (CMS). Inspections and visible emissions monitoring of the particulate control device system provide data indicative of a well-operated and maintained control device. The inspections will ensure there are no leaks in the duct work, while the visible emissions monitoring will ensure that the particulate control device is operating as intended, and that no excess emissions are emitted. Many of the paints and allied products manufacturing facilities are small businesses, and incorporating a continuous monitoring system would create an economic hardship on many of these businesses. Therefore, we have not incorporated the commenter's suggestion to require continuous monitoring of pressure drop. We also reviewed the graduated type of inspections and monitoring outlined in the NESHAP for Nine Metal Fabrication and Finishing Sources and believe that this type of inspection and monitoring program is not appropriate for the paints and allied products industry. Many of the nine metal fabrication and finishing facilities require continuous operation of the particulate control device. In contrast, the majority of paint and allied products are produced in batches and the operation of the particulate control device is expected to be intermittent. Therefore, we believe that the proposed inspection and monitoring requirements for the paints and allied products manufacturing industry are appropriate.

While the proposed rule included inspection requirements, it did not contain any provisions regarding required actions if problems were found during an inspection. We agree that such a requirement is needed to ensure that corrective action will be taken promptly. Therefore, we have incorporated the commenter's suggestion to require that corrective action be initiated as soon as practicable to mitigate any problems when system integrity is compromised and that the identified problem be fully corrected and documented within 15 days of first discovery.

F. Reporting and Recordkeeping Requirements

1. Compliance Certification

Comment: The commenters note that there seems to be conflict between Section 63.11603(b), which requires the development and retention of compliance certifications and the development, retention, and submission of deviation reports when deviations from the requirements of the rule exist or have existed. Section III.E of the preamble requires that a responsible official sign off that all the requirements were met in the preceding month within 15 days of the end of each month. Two commenters recommend that the required records suffice in demonstrating compliance. Another commenter believes that the submission of a deviation report and annual certification when deviations have occurred during a calendar year will assist regulated entities in maintaining compliance and will assist the regulatory agencies in compliance oversight.

Response: We do not believe that a conflict exists between the compliance certification requirements and the deviation reports. The compliance certifications of section 63.11603(b) are the baseline requirement to demonstrate ongoing compliance with the standard. However, if a deviation occurs during the previous twelve month period, the facility must prepare and submit a deviation report, which details the specific area(s) of noncompliance with the standard and efforts undertaken to return the source to compliance. These are two separate requirements, and the latter applies in the event of a deviation. Submission of the deviation report is necessary so that the regulatory agency remains apprised of the ongoing compliance status of the facility and can focus their compliance assistance and enforcement response efforts.

However, we believe that section § 63.11603(b)(2)(ii), which requires that a statement in accordance with § 63.9(h) of the General Provisions to be signed by a responsible official, is sufficient to ensure compliance with the regulations, and that no additional requirement that a responsible official must certify that all requirements were met in a particular month by the 15th day of the following month is necessary. Therefore, the final rule does not include the latter certification requirement.

These revisions mean that a responsible official must annually certify that all requirements have been met. We believe that the annual certification by the responsible official is sufficient to ensure that the facility has complied with all of the requirements throughout the year, and that the additional burden of monthly certification is not warranted. In addition, we agree with the commenter that the submission of an Annual Compliance Certification and Deviation Report from facilities where deviations have occurred during the calendar year will assist regulated entities in maintaining compliance and will assist the regulatory agencies in compliance oversight.

Comment: The commenter notes that some facilities have older particulate control devices, which while still effective, may not have manufacturer information available. The commenter states that sources should not be prohibited from using these control

devices if they meet the emission standards of this subpart, even though they no longer have the original paperwork for the device. The commenter recommends that if the original records are not available, the source should follow best operating practices for the devices.

Response: We recognize that some facilities may not have, and may not be able to obtain, the manufacturer's instructions, despite their best efforts. Therefore, we agree with the commenter and will remove the reference to the manufacturer's instructions in § 63.11602(a)(2)(iii) and also remove § 63.11603(c)(3).

G. Baseline Emissions and Emission Reductions

1. Emissions Factors

Comment: Two commenters say that EPA used old AP–42 emission factors which they believe doubles the calculated emissions in comparison to the actual emissions. For example, one of the commenters states that EPA used an outdated AP–42 emission factor of 1.5 lbs VOC/100 lbs of product that was developed based on solvent based coatings from the 1950s. The commenter states that these coatings are not representative of today's high solids and waterborne coatings. The commenters point out that Chapter 8 of EPA's Emission Inventory Improvement Program (EIIP) states that the use of source-specific emission models/equations is the preferred technique for estimating emissions from coatings manufacturing mixing operations since emission factors (AP–42) are not as accurate as specific emission models or equations. They said that since EPA is unclear whether the facilities tested in preparing this factor actually represent a random sample of the industry, the AP–42 factor for paint and varnish manufacturing is assigned an emission factor rating of C. One commenter asks that EPA revise its estimates using accurate models and data.

Response: The EIIP provides four methods for estimating emissions from paint, ink, and other coating manufacturing operations: Emission factors; source-specific models; mass-balance calculations; and test data. In order of preference, the commenter is correct that source-specific emissions models are preferred to using emission factors. However, when the data necessary to run the emissions models are not available, the use of emission factors is a reasonable way to estimate emissions. The commenters imply that all emission levels for this rulemaking were estimated using AP–42 emission factors. This is not the case. In fact, for purposes of assessing impacts, including cost-effectiveness, as presented in the background memoranda (EPA–HQ–OAR–2008–0053–0070), the HAP emissions from the Paints and Allied Products Manufacturing category were calculated using the 2002 National Emissions Inventory (NEI) data. The NEI is a national emissions inventory that is built from the ''ground up.'' That is, emission estimates generated by individual plants and companies are submitted to state and local agencies, who then submit the data to EPA for inclusion in the NEI. While the basis for all the emission estimates in the NEI is not provided, the facilities that submit emissions data to their state and local agencies generally use test data, emission models, and mass-balance calculations to create their estimates, where such information is available. The baseline HAP emissions from the 2002 NEI were 4,761 tons per year.

Emission factor data from AP–42 were used to estimate VOC and PM emissions from model plants to estimate the capital and annual costs of control equipment for each of the model plants. The fraction of the AP–42 VOC and PM emissions that are HAP were calculated using the HAP/VOC mass fraction obtained from the facilities that reported both HAP and VOC emissions in the 2002 NEI database. Using the assumptions from the Regulatory Alternative Impacts memorandum (EPA–HQ–OAR–2008–0053–0073) regarding the number of facilities that are currently controlled, the emission factors from AP–42, and the HAP/VOC mass fractions from the 2002 NEI, the HAP emissions were estimated to be 4,591 tons per year. A comparison between the HAP emissions in the industry-reported NEI (4,761 tons/yr) and those estimated from AP–42 factors and HAP speciation profiles (4,591) supports EPA's use of the AP–42 factors for estimating emissions from the model plants, because the AP–42 factors result in a similar estimate of emissions as the NEI database.

Comment: One commenter states that most of the methylene chloride emissions documented by EPA are from facilities that package paint stripper/paint remover products, which are specifically excluded from this rulemaking. Therefore, according to the commenter, EPA should discount any emissions that result from the packaging of methylene-based paint strippers and paint removers. In addition, the commenter indicates that one company that produces nickel-based coatings accounted for most nickel emissions from the industry. Again, they claim that EPA should discount the nickel emissions from this one company. Finally, the commenter says that it appears that EPA inadvertently included several pigment manufacturing operations in the NEI database, resulting in increased metal emissions for the industry. The commenter believes that EPA should remove the emissions associated with paint stripper/paint remover packaging; the company that produces unique nickel based coatings; and the emissions from pigment manufacturing operations from the emissions of the coatings manufacturing industry, since these overstated emissions have an impact on EPA's cost effectiveness calculations.

Response: For purposes of assessing the impacts of today's rule, we used the 2002 NEI data. The source classification codes (SCC) in the 2002 NEI database show that the main sources of methylene chloride emissions are from general mixing and handling, cleaning, and degreasing. None of these SCCs indicate that methylene chloride emissions occur during packaging of paint stripper or paint remover products. Therefore, we have no reason to believe that the estimated methylene chloride emissions used in the baseline emissions (EPA–HQ–OAR–2008–0053–0070) are incorrect.

We reviewed the SCCs and process descriptions in the 2002 NEI database and did not find any pigment manufacturing facilities. Therefore, no adjustments to the 2002 NEI data are needed.

We reviewed the 2002 NEI emissions data used to develop the baseline emissions for the paints and allied products source category and found that 60 of the 63 of emission data points used to estimate nickel emissions were from combustion sources and should not have been included in the baseline emissions. By removing these emission points, the total nickel emissions would be reduced by 0.028 tons per year, and the total estimated nickel emissions from the paints and allied products industry would be reduced by 0.070 tons per year. This decrease in nickel emissions would not significantly affect the total HAP emissions, which was estimated to be 4,761 tons per year, or the total listed HAP emissions which was estimated to be 221.3 tons per year. Therefore, we believe that revising the estimated baseline HAP emissions would have little or no impact on the cost effectiveness calculations.

We recognize that the paints and allied products manufacturing industry has reduced its urban HAP emissions over the past decades. The regulations

being finalized today will ensure that future emissions from paints and allied products manufacturing operations will be limited to the same level that is being generally achieved today and was determined to be GACT. Without such regulations, there is nothing that would limit future target HAP emissions from a new paint or allied product manufacturing product.

H. Title V Requirements

Comment: The commenter supports EPA's proposed rule in the exemption of the Paints and Allied Products Manufacturing area source category from Title V permitting requirements. The commenter believes that the proposed recordkeeping and reporting requirements are sufficient to determine compliance with the rule, and EPA should balance these requirements against the level of resources typically present at such smaller sites and the expected amount of emission reductions associated with these requirements.

Another commenter states that to demonstrate that compliance with title V would be ''unnecessarily burdensome,'' EPA must show, inter alia, that the ''burden'' of compliance is unnecessary. According to the commenter, by promulgating title V, Congress plainly indicated that it viewed the burden imposed by its requirements as necessary as a general rule. The commenter says that these requirements provide many benefits that Congress clearly viewed as necessary. Thus, continues the commenter, EPA must show why for any given category, special circumstances make compliance unnecessary. The commenter maintains that EPA has not made that showing for any of the categories it proposes to exempt.

Response: EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if she determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. See CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (''Exemption Rule''). In addition to interpreting the term ''unnecessarily burdensome'' and developing the four-factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are sufficient implementation and enforcement programs in place to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).[9]

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' *See* 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination, and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

The commenter asserts that ''EPA must show * * * that the 'burden' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the June 1, 2009 proposed rule for the category at issue in this rule. Rather, we applied the four-factor balancing test articulated in the Exemption Rule to the source category. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the June 1, 2009 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking.[10]

Furthermore, we believe that the commenter's position that ''EPA must show * * * that the ''burden'' of compliance is unnecessary'' is unreasonable and contrary to Congressional intent concerning the applicability of title V to area sources. Congress intended to treat area sources differently under title V, as it expressly authorized the EPA Administrator to exempt such sources from the requirements of title V at her discretion. There are several instances throughout the CAA where Congress chose to treat major sources differently than non-major sources, as it did in CAA section 502. Moreover, although the commenter espouses a new interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' for an area source category, the commenter does not explain why EPA's interpretation of the term ''unnecessarily burdensome'' is arbitrary, capricious or otherwise not in accordance with law. We maintain that

[9] In the Exemption Rule, in addition to determining whether compliance with title V requirements would be unnecessarily burdensome on an area source category, we considered, consistent with the guidance provided by the legislative history of section 502(a), whether exempting the area source category would adversely affect public health, welfare or the environment. *See* 72 FR 15254–15255, March 25, 2005. As shown above, after conducting the four-factor balancing test and determining that title V requirements would be unnecessarily burdensome on the area source categories at issue here, we examined whether the exemption from title V would adversely affect public health, welfare and the environment, and found that it would not.

[10] If the commenter objected to our interpretation of the term ''unnecessarily burdensome'' in the Exemption Rule, (s)he should have commented on and challenged that rule. However, any challenge to the Exemption Rule is now time-barred by CAA section 307(b). Although we received comments on the title V Exemption Rule during the rulemaking process, no one sought judicial review of that rule.

our interpretation of the term ''unnecessarily burdensome'' in section 502, as set forth in the Exemption Rule, is reasonable.

Comment: One commenter states that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information for the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary title V permits. The commenter also says that EPA does not claim, far less demonstrate with substantial evidence, that citizens have the same ability to obtain emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level. The commenter states that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important, both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations, and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter states that, likewise, it is difficult or impossible for citizens to bring enforcement actions. The commenter continues that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt without title V permits. The commenter also says that EPA does not claim, far less demonstrate with substantial evidence, that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claims that, to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt. The commenter concludes that EPA does not even acknowledge these benefits to title V, far less explain why they are unnecessary, and that for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response: Once again, the commenter attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with substantial evidence that citizens would have the same access to information and the same ability to enforce under these NESHAP, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is ''unnecessarily burdensome'' on an area source category cannot be sustained. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. In any event, EPA's interpretation is reasonable. Furthermore, the commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the sources we are exempting, nor do the comments provide a basis for the Agency to reconsider the exemption as we are finalizing it.

EPA reasonably applied the four factors to the facts of the source category at issue in this rule, and the commenter has not identified any flaw in EPA's application of the four-factor test to the area source category at issue here. Moreover, as explained in the proposal, we considered implementation and enforcement issues in the fourth factor of the four-factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. See 70 FR 75326.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in the proposal, we believe that state-delegated programs are sufficient to assure compliance with the NESHAP and that EPA retains authority to enforce this NESHAP under the CAA. 74 FR 26152. We also indicated that States and EPA often conduct voluntary compliance assistance, outreach, and education programs to assist sources, and that these additional programs will supplement and enhance the success of compliance with this NESHAP. 74 FR 26152. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with these NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information that States will treat information submitted under this NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, in evaluating the fourth factor in EPA's balancing test EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of the NESHAP.

Comment: One commenter explains that title V provides important monitoring benefits, and, according to the commenter, EPA admits that title V monitoring, ''may improve compliance * * * by requiring monitoring * * * to assure compliance with emission limitations and control technology requirements imposed in the standard.'' (74 FR at 26151) The commenter further states that ''EPA argues that 'the monitoring, recordkeeping, and reporting requirements in this proposed rule are sufficient to assure compliance with the requirements of the proposed rule.' '' Id. The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter states that, for this reason also, its claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and its exemption is unlawful, arbitrary, and capricious.

Response: As noted in the earlier comment, EPA used the four-factor test

to determine if title V requirements were unnecessarily burdensome. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source categories. *See* 70 FR 75323. It is in the context of this first factor that EPA evaluates the monitoring, recordkeeping, and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V. *See* 70 FR 75323.

The commenter asserts that ''EPA argues that 'the monitoring, recordkeeping, and reporting requirements in this proposed rule are sufficient to assure compliance with the requirements of the proposed rule.' '' We nowhere state or imply that the only monitoring, recordkeeping, and reporting required for the rule is in the form of recordkeeping. As stated in the proposal, we required daily, weekly, monthly, and yearly testing of particulate control devices, as well as annual compliance reports and deviation reports in addition to the recordkeeping that serves as monitoring for the particulate control devices. The commenter does not provide any evidence that contradicts the conclusion that the proposed monitoring, recordkeeping, and reporting requirements are sufficient to assure compliance with the standards in the rule.

Based on the foregoing, we considered whether title V monitoring, recordkeeping, and reporting requirements would lead to significant improvements in the monitoring, recordkeeping, and reporting requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring, recordkeeping, and reporting requirements in this area source rule can assure compliance for those sources we are exempting.

For the reasons described above and in the proposed rule, the first factor supports an exemption. Assuming, for the sake of argument, that the first factor alone cannot support the exemption, the four-factor balancing test requires EPA to examine the factors, in combination, and determine whether the factors, viewed together, weigh in favor of exemption. See 70 FR 75326. As explained above, we determined that the factors, weighed together, support title V exemption for this source category.

Comment: One commenter believes EPA argued that its own belief that title V is a ''significant burden'' on area sources further justifies its exemption (74 FR 26151). According to the commenter, regardless of whether EPA regards the burden as ''significant,'' the Agency may not exempt a category from compliance with title V requirements unless compliance is ''unnecessarily burdensome.'' The commenter states that, regardless, EPA's claims about the alleged significance of the burden of compliance are entirely conclusory and could be applied equally to any major or area source category. The commenter also states that the Agency does not show that the compliance burden is especially great for any of the sources it proposes to exempt, and, thus, does not demonstrate that the alleged burden necessitates treating them differently from other categories by exempting them from compliance with title V requirements.

Response: The commenter appears to take issue with the formulation of the second factor of the four-factor balancing test. Specifically, the commenter states that EPA must determine that title V compliance is ''unnecessarily burdensome'' and not a ''significant burden,'' as expressed in the second factor of the four-factor balancing test.

As we have stated before, at proposal we found the burden placed on these sources in complying with the title V requirements is significant when we applied the four-factor balancing test. We note that the commenter, in other parts of comments on the title V exemptions, argues that EPA must demonstrate that every title V requirement is ''unnecessary'' for a particular source category before an exemption can be granted, but makes no mention of the ''burden'' of those requirements on area sources; here the commenter argues that ''significant burden'' is not appropriate for the second factor. Notwithstanding the commenter's inconsistency, as explained above, the four-factor balancing test was established in the Exemption Rule and we did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in this rule. As explained above, we maintain that the Agency's interpretation of the term ''unnecessarily burdensome,'' as set forth in the Exemption Rule and reiterated in the proposal to this rule, is reasonable.

Contrary to the commenter's assertions, we properly analyzed the second factor of the four-factor balancing test. *See* 70 FR 75320. Under that factor, EPA considers whether title V permitting would impose a significant burden on the area source categories, and whether that burden would be aggravated by any difficulty that the sources may have in obtaining assistance from the permitting agencies. *See* 70 FR 75324. The commenter appears to assert that the second factor must be satisfied for EPA to exempt an area source category from title V, but, as explained above, the four factors are considered in combination. We have concluded that the second factor, in combination with the other factors, supports an exemption for the paints and allied products manufacturing area sources that we are exempting from compliance with title V in this final rule.

Therefore, we disagree with the commenter's assertion that EPA's finding (i.e., that the burden of obtaining a title V permit is significant, and does not equate to the required finding that the burden is unnecessary) is misplaced. While EPA could have found that the second factor alone could justify the exemption for the sources we are exempting in this rule, EPA found that the other three factors also support exempting these sources from the title V requirements because the permitting requirements are unnecessarily burdensome for the paints and allied products manufacturing area sources we are exempting.

Comment: According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (74 FR 26152). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe, with respect to any of the categories it proposes to exempt, that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in this NESHAP, would not provide additional compliance benefits. The commenter also states that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response: The commenter mischaracterizes the first and third factors of the four-factor balancing test and takes out of context certain statements in the proposed rule concerning the factors used in the balancing test to determine if imposition

of title V permit requirements is unnecessarily burdensome for the source categories. The commenter also mischaracterizes the first factor of the four-factor balancing test with regard to determining whether imposition of title V would result in significant improvements in compliance. In addition, the commenter mischaracterizes the analysis in the third factor of the balancing test, which instructs EPA to take into account any gains in compliance that would result from the imposition of the title V requirements.

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits, as the commenter asserts. While EPA recognizes that requiring a title V permit offers additional compliance options, the statute provides EPA with the discretion to evaluate whether compliance with title V would be unnecessarily burdensome to specific area sources. For the sources we are exempting, we conclude that requiring title V permits would be unnecessarily burdensome.

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. The first factor calls for a consideration of ''whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category.'' Thus, contrary to the commenter's assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant improvements in compliance requirements.

The monitoring, recordkeeping and reporting requirements in the rule are sufficient to assure compliance with the requirements of this rule for the sources we are exempting, consistent with the goal in title V permitting. For example, in the Notification of Compliance Status report, the source must certify that, if necessary, it has implemented management practices and installed controls. *See* 40 CFR 63.11603 in the final rule. The source must also submit annual deviation reports to the permitting agency if there has been a deviation in the requirements of the rule. *See* 40 CFR 63.11501 in the final rule. The requirements in the final rule provide sufficient basis to assure compliance, and EPA does not believe that the title V requirements, if applicable to the sources that we are exempting, would offer significant improvements in the compliance of the sources with the rule.

Third, the commenter incorrectly characterizes our statements in the proposed rule concerning our application of the third factor. Under the third factor, EPA evaluates ''whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.'' Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination.Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA considers the costs of title V permitting requirements, including consideration of any improvement in compliance above what the rule requires. In considering the third factor, we stated, in part, that, ''[b]ecause the costs, both economic and non-economic, of compliance with title V are high, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for these area source categories.'' See 74 FR 26152.

Most importantly, EPA considered all four factors in the balancing test in determining whether title V was unnecessarily burdensome on the area source category we are exempting from title V in this final rule. The commenter's statements do not demonstrate a flaw in EPA's application of the four-factor balancing test to the specific facts of the sources we are exempting, nor do the comments provide sufficient basis for the Agency to reconsider its.

Comment: According to one commenter, EPA argued that alternative State implementation and enforcement programs assure compliance with the underlying NESHAP without relying on title V permits (74 FR 26152). The commenter states that again, EPA's claim is entirely conclusory and generic. The commenter also states that ''the Agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary'' (emphasis added). Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter says that, absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, the Agency's argument boils down to the generic and conclusory claim that it generally views title V requirements as unnecessary. The commenter states that, while this may be EPA's view, it was not Congress' view when Congress enacted title V, and a general view that title V is unnecessary, does not suffice to show that title V compliance is unnecessarily burdensome.

Response: Contrary to the commenters' assertions, EPA does believe that title V is appropriate under certain circumstances; we think that exemption from title V is appropriate for those sources.

In this comment, the commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term ''unnecessarily burdensome'' is not the subject of this rulemaking. In any event, as explained above, we believe the Agency's interpretation of the term ''unnecessarily burdensome'' is a reasonable one. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. The fourth factor involves a determination as to whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the rule without relying on the title V permits. In discussing the fourth factor in the proposal, EPA states that, prior to delegating implementation and enforcement to a State, EPA must ensure that the State has programs in place to enforce the rule. EPA believes that these programs will be sufficient to assure compliance with the rule. EPA also retains authority to enforce this NESHAP anytime under CAA sections 112, 113, and 114. EPA also noted other factors in the proposal that together are sufficient to assure compliance with this area source NESHAP. The commenter argues that EPA cannot exempt any of the area sources in these categories from title V permitting requirements because ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—*unlike all the other major and area source NESHAP it has issued without title V exemptions*—title V compliance is unnecessary'' (emphasis added). As an initial matter, EPA cannot exempt major sources from title V permitting. 42 U.S.C. 502(a). As

for area sources, the standard that the commenter proposes—that EPA must show that ''title V compliance is unnecessary''—is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V requirements are unnecessarily burdensome.

Furthermore, we disagree that the basis for excluding the paints and allied products manufacturing area sources we are exempting from title V requirements is generally applicable to sources in any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the source category at issue in this rule. For example, in assessing whether the costs of requiring the sources to obtain a title V permit were burdensome, we concluded that the high relative costs would not be justified given that there is likely to be little or no potential gain in compliance based on the control device requirements and management practices of this rule.

Comment: One commenter states that, as EPA concedes, the legislative history of the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment. Furthermore, the commenter states that EPA conceded this point. *See* 74 FR 26152. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare, and the environment. The commenter says that instead, EPA offered only the conclusory assertion that ''the level of control would remain the same,'' whether title V permits are required or not (74 FR 26512). The commenter continues by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in the proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter states that those arguments are wrong for the reasons given above, and, therefore, EPA's claims about public health, welfare, and the environment are wrong too. The commenter states that Congress enacted title V for a reason: To assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA. The commenter said that those benefits—of which EPA's proposed rule deprives the public—would improve compliance with the underlying standards and, thus, have benefits for public health, welfare, and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again, simply rests on its own apparent belief that they are never necessary. The commenter concludes that, for the reasons given above, that the attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response: Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator ''finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.'' *See* CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources ''unnecessarily burdensome,'' as requiring consideration of the four factors discussed above. At proposal, EPA applied these four factors to the paints and allied products manufacturing area source category subject to this rule, and concluded that requiring title V for this area source category would be unnecessarily burdensome. We maintain that this conclusion is accurate for the sources we are exempting in this rule.

In addition to determining that title V would be unnecessarily burdensome on the area source category, as in the Exemption Rule, EPA also considered, consistent with our interpretation of the legislative history, whether exempting the area source categories would adversely affect public health, welfare, or the environment. As explained in the proposal preamble, we concluded that exempting the area source category at issue in this rule would not adversely affect public health, welfare, or the environment because the level of control would be the same even if title V applied. We further explained in the proposal preamble that the title V permit program does not generally impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. The commenter has not provided any information to demonstrate that the exemption from title V that we are finalizing will adversely affect public health, welfare, or the environment.

VI. Impacts of the Final Standards

Existing paints and allied products manufacturing facilities have made significant emission reductions since 1990 through product reformulation, process and cleaning changes, installation of control equipment, and as a result of OSHA regulations. Affected sources appear to be well-controlled, and our GACT determination reflects such controls. We estimate that the only impacts associated with this rule are the capital and annual costs of installing and operating a particulate control device, the capital cost of adding lids or covers to process vessels, and the compliance requirements (i.e., reporting, recordkeeping, and testing).

We estimate that 21 percent of the facilities, or 460 area sources, will be required to install particulate control equipment. The total capital costs for installing particulate control devices is estimated to be $8.1 million and the annual cost is estimated to be $3.1 million per year.

We estimate that 110 facilities will be required to install lids or covers on their process, mixing, and storage vessels. We estimate that it will cost $38,000 in total capital costs and $5,500 annually. However, the rule will also provide a cost savings to these same facilities, because they will have more coatings product at the end of the manufacturing process.

The other affected facilities will incur costs only for submitting the notifications and for completing the annual compliance certification. The cost associated with recordkeeping and the one-time reporting requirements is estimated to be $147 per facility.

Through compliance with this rule, these facilities will reduce total PM emissions by 6,300 tons/yr (5,700 Mg/yr), total metal HAP emissions by 4.2 tons/yr (3.8 Mg/yr), and listed urban metal HAP (cadmium, chromium, lead, nickel) emissions by 1.6 tons/yr (1.5 Mg/yr). We estimate that requiring the use of covers on process vessels will reduce VOC emissions by 1,700 tons/yr (1,600 Mg/yr), volatile HAP emissions by 169 tons/yr (153 Mg/yr), and listed urban volatile HAP (benzene, methylene chloride) emissions by 4.3 tons/yr (3.9 Mg/yr).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under

the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP requires Paints and Allied Products Manufacturing area sources to submit an Initial Notification and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A). Records are required to demonstrate compliance with the opacity and visual emissions (VE) requirements. The owner or operator of a paints and allied products manufacturing facility also is subject to notification and recordkeeping requirements in 40 CFR 63.9 and 63.10 of the General Provisions (subpart A), although we have deemed that annual compliance reports are sufficient instead of semiannual reports.

The annual burden for this information collection averaged over the first three years of this ICR is estimated to be a total of 2,887 labor hours per year at a cost of $322,009 or approximately $147 per facility. The average annual reporting burden is almost 3 hours per response, with approximately 2 responses per facility for 730 respondents. There are no capital and operating and maintenance costs associated with the final rule requirements for existing sources. Burden is defined at 5 CFR 1320.3(b).

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. EPA displays OMB control numbers in various ways. For example, EPA lists OMB control numbers for EPA's regulations in 40 CFR part 9, which we amend periodically. Additionally, we may display the OMB control number in another part of the CFR, or in a valid **Federal Register** notice, or by other appropriate means. The OMB control number display will become effective the earliest of any of the methods authorized in 40 CFR part 9.

When this ICR is approved by OMB, the Agency will publish a **Federal Register** notice announcing this approval and displaying the OMB control number for the approved information collection requirements contained in this final rule. We will also publish a technical amendment to 40 CFR part 9 in the **Federal Register** to consolidate the display of the OMB control number with other approved information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

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

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule is estimated to impact a total of almost 2,200 area source paints and allied products manufacturing facilities; over ninety percent of these facilities are estimated to be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be approximately 0.13 percent for the estimated 460 facilities that would not initially be in compliance. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce such impact. The standards represent practices and controls that are common throughout the paints and allied products manufacturing industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed in consultation with small business representatives on the state and national levels and the trade associations that represent small businesses.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. This rule is not expected to impact State, local, or tribal governments. The nationwide annualized cost of this rule for affected industrial sources is $3.1 million/yr. Thus, this rule would not be subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

This final rule would also not be subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The rule would not apply to such governments and would impose no obligations upon them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not impose any requirements on State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule imposes no requirements on tribal governments; thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is

not subject to EO 13045 because it is based solely on technology performance.

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

This final rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects. Existing energy requirements for this industry would not be significantly impacted by the additional controls or other equipment that may be required by this rule.

I. National Technology Transfer and Advancement Act

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

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to use EPA Method 203C and EPA Method 22.

Under § 63.7(f) and § 63.8(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule and amendments.

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

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

EPA has determined that this final rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule establishes national standards for the Paints and Allied Products Manufacturing area source category; this will reduce HAP emissions, therefore decreasing the amount of emissions to which all affected populations are exposed.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final 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.** 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 final rule will be effective on December 3, 2009.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Part 63 is amended by adding subpart CCCCCCC to read as follows:

Subpart CCCCCCC—National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing

Applicability and Compliance Dates

Sec.
63.11599 Am I subject to this subpart?
63.11600 What are my compliance dates?

Standards, Monitoring, and Compliance Requirements

63.11601 What are the standards for new and existing paints and allied products manufacturing facilities?
63.11602 What are the performance test and compliance requirements for new and existing sources?
63.11603 What are the notification, reporting, and recordkeeping requirements?
63.11604 [Reserved]

Other Requirements and Information

63.11605 What General Provisions apply to this subpart?
63.11606 Who implements and enforces this subpart?
63.11607 What definitions apply to this subpart?
63.11608–63.11638 [RESERVED]

Tables to Subpart CCCCCCC of Part 63

Table 1 to Subpart CCCCCCC of Part 63—Applicability of General Provisions to Subpart CCCCCCC

Subpart CCCCCCC—National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing

Applicability and Compliance Dates

§ 63.11599 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a facility that performs paints and allied products manufacturing that is an area source of hazardous air pollutant (HAP) emissions and processes, uses, or generates materials containing HAP, as defined in § 63.11607.

(b) The affected source consists of all paints and allied products manufacturing processes that process, use, or generate materials containing HAP at the facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source on or before June 1, 2009.

(2) An affected source is new if you commenced construction or

reconstruction of the affected source on or after June 1, 2009.

(3) A facility becomes an affected source when you commence processing, using, or generating materials containing HAP, as defined in § 63.11607.

(c) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Whether you have a title V permit or not, you must continue to comply with the provisions of this subpart.

(d) An affected source is no longer subject to this subpart if the facility no longer processes, uses, or generates materials containing HAP and does not plan to process, use or generate materials containing HAP in the future.

(e) The standards of this subpart do not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

§ 63.11600 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart by December 3, 2012.

(b) If you own or operate a new affected source, you must achieve compliance with the applicable provisions of this subpart by December 3, 2009, or upon startup of your affected source, whichever is later.

(c) If you own or operate a facility that becomes an affected source in accordance with § 63.11599(b)(3) after the applicable compliance date in paragraphs (a) or (b) of this section, you must achieve compliance with the applicable provisions of this subpart by the date that you commence processing, using, or generating materials containing HAP, as defined in § 63.11607.

Standards, Monitoring, and Compliance Requirements

§ 63.11601 What are the standards for new and existing paints and allied products manufacturing facilities?

(a) For each new and existing affected source, you must comply with the requirements in paragraphs (a)(1) through (6) of this section. These requirements apply at all times.

(1) You must add the dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel and operate a capture system that minimizes fugitive particulate emissions during the addition of dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling process.

(2) You must capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the addition of dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel to a process vessel. This requirement does not apply to pigments and other solids that are in paste, slurry, or liquid form.

(3) *You must:* (i) Capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the addition of dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel to a process vessel; or

(ii) Add pigments and other solids that contain compounds of cadmium, chromium, lead, or nickel only in paste, slurry, or liquid form.

(4) *You must:* (i) Capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the addition of dry pigments and solids that contain compounds of cadmium, chromium, lead, or nickel to the grinding and milling process; or

(ii) Add pigments and other solids that contain compounds of cadmium, chromium, lead, or nickel to the grinding and milling process only in paste, slurry, or liquid form.

(5) *You must:* (i) Capture particulate emissions and route them to a particulate control device meeting the requirements of paragraph (a)(6) of this section during the grinding and milling of materials containing compounds of cadmium, chromium, lead, or nickel;

(ii) Fully enclose the grinding and milling equipment during the grinding and milling of materials containing compounds of cadmium, chromium, lead, or nickel; or

(iii) Ensure that the pigments and solids are in the solution during the grinding and milling of materials containing compounds of cadmium, chromium, lead, or nickel.

(6) The visible emissions from the particulate control device exhaust must not exceed 10-percent opacity for particulate control devices that vent to the atmosphere. This requirement does not apply to particulate control devices that do not vent to the atmosphere.

(7) [RESERVED]

(b) For each new and existing affected source, you must comply with the requirements in paragraphs (b)(1) through (5) of this section.

(1) Process and storage vessels that store or process materials containing benzene or methylene chloride, except for process vessels which are mixing vessels, must be equipped with covers or lids meeting the requirements of paragraphs (b)(1)(i) through (iii) of this section.

(i) The covers or lids can be of solid or flexible construction, provided they do not warp or move around during the manufacturing process.

(ii) The covers or lids must maintain contact along at least 90-percent of the vessel rim. The 90-percent contact requirement is calculated by subtracting the length of any visible gaps from the circumference of the process vessel, and dividing this number by the circumference of the process vessel. The resulting ratio must not exceed 90-percent.

(iii) The covers or lids must be maintained in good condition.

(2) Mixing vessels that store or process materials containing benzene or methylene chloride must be equipped with covers that completely cover the vessel, except as necessary to allow for safe clearance of the mixer shaft.

(3) All vessels that store or process materials containing benzene or methylene chloride must be kept covered at all times, except for quality control testing and product sampling, addition of materials, material removal, or when the vessel is empty. The vessel is empty if:

(i) All materials containing benzene or methylene chloride have been removed that can be removed using the practices commonly employed to remove materials from that type of vessel, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters (one inch) depth of residue remains on the bottom of the vessel, or no more than 3 percent by weight of the total capacity of the vessel remains in the vessel.

(4) Leaks and spills of materials containing benzene or methylene chloride must be minimized and cleaned up as soon as practical, but no longer than 1 hour from the time of detection.

(5) Rags or other materials that use a solvent containing benzene or methylene chloride for cleaning must be kept in a closed container. The closed container may contain a device that allows pressure relief, but does not allow liquid solvent to drain from the container.

§ 63.11602 What are the performance test and compliance requirements for new and existing sources?

(a) For each new and existing affected source, you must demonstrate initial

compliance by conducting the inspection and monitoring activities in paragraph (a)(1) of this section and ongoing compliance by conducting the inspection and testing activities in paragraph (a)(2) of this section.

(1) Initial particulate control device inspections and tests. You must conduct an initial inspection of each particulate control device according to the requirements in paragraphs (a)(1)(i) through (iii) of this section and perform a visible emissions test according to the requirements of paragraph (a)(1)(iv) of this section. You must record the results of each inspection and test according to paragraph (b) of this section and perform corrective action where necessary.You must conduct each inspection no later than 180 days after your applicable compliance date for each control device which has been operated within 60 days following the compliance date. For a control device which has not been installed or operated within 60 days following the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet particulate control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the system ductwork and control equipment for leaks and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system.

(ii) For each dry particulate control system, you must visually inspect the system ductwork and dry particulate control unit for leaks. You must also inspect the inside of each dry particulate control unit for structural integrity and condition.

(iii) An initial inspection of the internal components of a wet or dry particulate control system is not required if there is a record that an inspection meeting the requirements of this subsection has been performed within the past 12 months and any maintenance actions have been resolved.

(iv) For each particulate control device, you must conduct a visible emission test consisting of three 1-minute test runs using Method 203C (40 CFR part 51, appendix M). The visible emission test runs must be performed during the addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling equipment. If the average test results of the visible emissions test runs indicate an opacity greater than the applicable limitation in § 63.11601(a), you must take corrective action and retest within 15 days.

(2) Ongoing particulate control device inspections and tests. Following the initial inspections, you must perform periodic inspections of each PM control device according to the requirements in paragraphs (a)(2)(i) or (ii) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary. You must also conduct tests according to the requirements in paragraph (a)(2)(iii) of this section and record the results according to paragraph (b) of this section.

(i) You must inspect and maintain each wet particulate control system according to the requirements in paragraphs (a)(2)(i)(A) through (C) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet particulate control system.

(B) You must conduct weekly visual inspections of any flexible ductwork for leaks.

(C) You must conduct inspections of the rigid, stationary ductwork for leaks, and the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(ii) You must inspect and maintain each dry particulate control unit according to the requirements in paragraphs (a)(2)(ii)(A) and (B) of this section.

(A) You must conduct weekly visual inspections of any flexible ductwork for leaks.

(B) You must conduct inspections of the rigid, stationary ductwork for leaks, and the interior of the dry particulate control unit for structural integrity and to determine the condition of the fabric filter (if applicable) every 12 months.

(iii) For each particulate control device, you must conduct a 5-minute visual determination of emissions from the particulate control device every 3 months using Method 22 (40 CFR part 60, appendix A–7). The visible emission test must be performed during the addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling equipment. If visible emissions are observed for two minutes of the required 5-minute observation period, you must conduct a Method 203C (40 CFR part 51, appendix M) test within 15 days of the time when visible emissions were observed. The Method 203C test will consist of three 1-minute test runs and must be performed during the addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel HAP to a process vessel or to the grinding and milling equipment. If the Method 203C test runs indicates an opacity greater than the limitation in § 63.11601(a)(4), you must comply with the requirements in paragraphs (a)(2)(iii)(A) through (C) of this section.

(A) You must take corrective action and retest using Method 203C within 15 days. The Method 203C test will consist of three 1-minute test runs and must be performed during the addition of dry pigments and solids containing compounds of cadmium, chromium, lead, or nickel to a process vessel or to the grinding and milling equipment. You must continue to take corrective action and retest each 15 days until a Method 203C test indicates an opacity equal to or less than the limitation in § 63.11601(a)(6).

(B) You must prepare a deviation report in accordance with § 63.11603(b)(3) for each instance in which the Method 203C opacity results were greater than the limitation in § 63.11601(a)(6).

(C) You must resume the visible determinations of emissions from the particulate control device in accordance with paragraph (a)(2)(iii) of this section 3 months after the previous visible determination.

(b) You must record the information specified in paragraphs (b)(1) through (6) of this section for each inspection and testing activity.

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Technique or method used;

(4) Operating conditions during the activity;

(5) Results; and

(6) Description of correction actions taken.

§ 63.11603 What are the notification, reporting, and recordkeeping requirements?

(a) *Notifications.* You must submit the notifications identified in paragraphs (a)(1) and (2) of this section.

(1) Initial Notification of Applicability. If you own or operate an existing affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than June 1, 2010. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 180 days after initial start-up of the operations or June 1, 2010, whichever is later. The notification of applicability must include the information specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source; and

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date.

(2) *Notification of Compliance Status.* If you own or operate an existing affected source, you must submit a Notification of Compliance Status in accordance with § 63.9(h) of the General Provisions by June 3, 2013. If you own or operate a new affected source, you must submit a Notification of Compliance Status within 180 days after initial start-up, or by June 1, 2010, whichever is later. If you own or operate an affected source that becomes an affected source in accordance with § 63.11599(b)(3) after the applicable compliance date in § 63.11600 (a) or (b), you must submit a Notification of Compliance Status within 180 days of the date that you commence processing, using, or generating materials containing HAP, as defined in 63.11607. This Notification of Compliance Status must include the information specified in paragraphs (a)(2)(i) and (ii) of this section.

(i) Your company's name and address;

(ii) A statement by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification, a description of the method of compliance (i.e., compliance with management practices, installation of a wet or dry scrubber) and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart.

(b) *Annual Compliance Certification Report.* You must prepare an annual compliance certification report according to the requirements in paragraphs (b)(1) through (b)(3) of this section. This report does not need to be submitted unless a deviation from the requirements of this subpart has occurred. When a deviation from the requirements of this subpart has occurred, the annual compliance certification report must be submitted along with the deviation report.

(1) *Dates.* You must prepare and, if applicable, submit each annual compliance certification report according to the dates specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) The first annual compliance certification report must cover the first annual reporting period which begins the day of the compliance date and ends on December 31.

(ii) Each subsequent annual compliance certification report must cover the annual reporting period from January 1 through December 31.

(iii) Each annual compliance certification report must be prepared no later than January 31 and kept in a readily-accessible location for inspector review. If a deviation has occurred during the year, each annual compliance certification report must be submitted along with the deviation report, and postmarked no later than February 15.

(2) *General Requirements.* The annual compliance certification report must contain the information specified in paragraphs (b)(2)(i) through (iii) of this section.

(i) Company name and address;

(ii) A statement in accordance with § 63.9(h) of the General Provisions that is signed by a responsible official with that official's name, title, phone number, e-mail address and signature, certifying the truth, accuracy, and completeness of the notification and a statement of whether the source has complied with all the relevant standards and other requirements of this subpart; and

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 12-month period beginning on January 1 and ending on December 31.

(3) *Deviation Report.* If a deviation has occurred during the reporting period, you must include a description of deviations from the applicable requirements, the time periods during which the deviations occurred, and the corrective actions taken. This deviation report must be submitted along with your annual compliance certification report, as required by paragraph (b)(1)(iii) of this section.

(c) *Records.* You must maintain the records specified in paragraphs (c)(1) through (4) of this section in accordance with paragraphs (c)(5) through (7) of this section, for five years after the date of each recorded action.

(1) As required in § 63.10(b)(2)(xiv), you must keep a copy of each notification that you submitted in accordance with paragraph (a) of this section, and all documentation supporting any Notification of Applicability and Notification of Compliance Status that you submitted.

(2) You must keep a copy of each Annual Compliance Certification Report prepared in accordance with paragraph (b) of this section.

(3) You must keep records of all inspections and tests as required by § 63.11602(b).

(4) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(5) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(6) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

(e) If you no longer process, use, or generate materials containing HAP after December 3, 2009, you must submit a Notification in accordance with § 63.11599(d), which must include the information specified in paragraphs (e)(1) and (2) of this section.

(1) Your company's name and address;

(2) A statement by a responsible official indicating that the facility no longer processes, uses, or generates materials containing HAP, as defined in § 63.11607, and that there are no plans to process, use or generate such materials in the future. This statement should also include the date by which the company ceased using materials containing HAP, as defined in 63.11607, and the responsible official's name, title, phone number, e-mail address and signature.

§ 63.11604 [Reserved]

Other Requirements and Information

§ 63.11605 What General Provisions apply to this subpart?

Table 1 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.16 apply to you.

§ 63.11606 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a state, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency pursuant to 40 CFR part 63, subpart E, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative nonopacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90. As required in § 63.11432, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

§ 63.11607 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, § 63.2, and in this section as follows:

Construction means the onsite fabrication, erection, or installation of an affected source. Addition of new equipment to an affected source does not constitute construction, but it may constitute reconstruction of the affected source if it satisfies the definition of reconstruction in § 63.2.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or management practices established by this subpart;

(2) Fails to meet any term or condition that is adopted to implement a requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or management practice in this subpart.

Dry particulate control system means an air pollution control device that uses filtration, impaction, or electrical forces to remove particulate matter in the exhaust stream.

Fabric filter means an air collection and control system that utilizes a bag filter to reduce the emissions of metal HAP and other particulate matter.

Material containing HAP means a material containing benzene, methylene chloride, or compounds of cadmium, chromium, lead, and/or nickel, in amounts greater than or equal to 0.1 percent by weight, as shown in formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material. Benzene and methylene chloride are volatile HAP. Compounds of cadmium, chromium, lead and/or nickel are metal HAP.

Paints and allied products means materials such as paints, inks, adhesives, stains, varnishes, shellacs, putties, sealers, caulks, and other coatings from raw materials that are intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives.

Paints and allied products manufacturing means the production of paints and allied products, the intended use of which is to leave a dried film of solid material on a substrate. Typically, the manufacturing processes that produce these materials are described by Standard Industry Classification (SIC) codes 285 or 289 and North American Industry Classification System (NAICS) codes 3255 and 3259 and are produced by physical means, such as blending and mixing, as opposed to chemical synthesis means, such as reactions and distillation. Paints and allied products manufacturing does not include:

(1) The manufacture of products that do not leave a dried film of solid material on the substrate, such as thinners, paint removers, brush cleaners, and mold release agents;

(2) The manufacture of electroplated and electroless metal films;

(3) The manufacture of raw materials, such as resins, pigments, and solvents used in the production of paints and coatings; and

(4) Activities by end users of paints or allied products to ready those materials for application.

Paints and allied products manufacturing process means all the equipment which collectively function to produce a paint or allied product. A process may consist of one or more unit operations. For the purposes of this subpart, the manufacturing process includes any, all, or a combination of, weighing, blending, mixing, grinding, tinting, dilution or other formulation. Cleaning operations, material storage and transfer, and piping are considered part of the manufacturing process. This definition does not cover activities by end users of paints or allied products to ready those materials for application. Quality assurance and quality control laboratories are not considered part of a paints and allied products manufacturing process. Research and development facilities, as defined in section 112(c)(7) of the CAA are not considered part of a paints and allied products manufacturing process.

Particulate matter control device means any equipment, device, or other article that is designed and/or installed for the purpose of reducing or preventing the discharge of metal HAP emissions to the atmosphere.

Process vessel means any stationary or portable tank or other vessel of any capacity and in which mixing, blending, diluting, dissolving, temporary holding, and other processing steps occur in the manufacturing of a coating.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part) applying for or subject to a title V permit: ''Responsible official'' shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Storage vessel means a tank, container or other vessel that is used to store volatile liquids that contain one or more of the listed volatile HAP, benzene or methylene chloride, as raw material feedstocks or products. It also includes objects, such as rags or other containers which are stored in the vessel. The following are not considered storage vessels for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing volatile liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process vessels.

Wet particulate control device means an air pollution control device that uses water or other liquid to contact and remove particulate matter in the exhaust stream.

§ 63.11608–63.11638 [Reserved]

Tables to Subpart CCCCCCC of Part 63

As required in § 63.11599, you must meet each requirement in the following table that applies to you. Part 63 General Provisions that apply for Paints and Allied Products Manufacturing Area Sources:

TABLE 1 TO SUBPART CCCCCCC OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO PAINTS AND ALLIED PRODUCTS MANUFACTURING AREA SOURCES

Citation	Subject	Applies to subpart CCCCCCC
63.1	Applicability	Yes.
63.2	Definitions	Yes.
63.3	Units and abbreviations	Yes.
63.4	Prohibited activities	Yes.
63.5	Preconstruction review and notification requirements	No.
63.6(a), (b)(1)–(b)(5), (c), (e)(1), (f)(2), (f)(3), (g), (i), (j).	Compliance with standards and maintenance requirements	Yes.
63.7(a), (e), and (f)	Performance testing requirements	Yes.
63.8	Monitoring requirements	No.
63.9(a)–(d), (i), and (j)	Notification Requirements	Yes.
63.10(a), (b)(1)	Recordkeeping and Reporting	Yes.
63.10(d)(1)	Recordkeeping and Reporting	Yes.
63.11	Control device and work practice requirements	No.
63.12	State authority and delegations	Yes.
63.13	Addresses of state air pollution control agencies and EPA regional offices	Yes.
63.14	Incorporation by reference	No.
63.15	Availability of information and confidentiality	Yes.
63.16	Performance track provisions	No.

[FR Doc. E9–27947 Filed 12–2–09; 8:45 am]

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H.R. 955/P.L. 111–99

To designate the facility of the United States Postal Service located at 10355 Northeast Valley Road in Rollingbay, Washington, as the "John 'Bud' Hawk Post Office". (Nov. 30, 2009; 123 Stat. 3011)

H.R. 1516/P.L. 111–100

To designate the facility of the United States Postal Service located at 37926 Church Street in Dade City, Florida, as the "Sergeant Marcus Mathes Post Office". (Nov. 30, 2009; 123 Stat. 3012)

H.R. 1713/P.L. 111–101

To name the South Central Agricultural Research Laboratory of the Department of Agriculture in Lane, Oklahoma, and the facility of the United States Postal Service located at 310 North Perry Street in Bennington, Oklahoma, in honor of former Congressman Wesley "Wes" Watkins. (Nov. 30, 2009; 123 Stat. 3013)

H.R. 2004/P.L. 111–102

To designate the facility of the United States Postal Service located at 4282 Beach Street in Akron, Michigan, as the "Akron Veterans Memorial Post Office". (Nov. 30, 2009; 123 Stat. 3014)

H.R. 2215/P.L. 111–103

To designate the facility of the United States Postal Service located at 140 Merriman Road in Garden City, Michigan, as the "John J. Shivnen Post Office Building". (Nov. 30, 2009; 123 Stat. 3015)

H.R. 2760/P.L. 111–104

To designate the facility of the United States Postal Service located at 1615 North Wilcox Avenue in Los Angeles, California, as the "Johnny Grant Hollywood Post Office Building". (Nov. 30, 2009; 123 Stat. 3016)

H.R. 2972/P.L. 111–105

To designate the facility of the United States Postal Service located at 115 West Edward Street in Erath, Louisiana, as the "Conrad DeRouen, Jr. Post Office". (Nov. 30, 2009; 123 Stat. 3017)

H.R. 3119/P.L. 111–106

To designate the facility of the United States Postal Service located at 867 Stockton Street in San Francisco, California, as the "Lim Poon Lee Post Office". (Nov. 30, 2009; 123 Stat. 3018)

H.R. 3386/P.L. 111–107

To designate the facility of the United States Postal Service located at 1165 2nd Avenue in Des Moines, Iowa, as the "Iraq and Afghanistan Veterans Memorial Post Office". (Nov. 30, 2009; 123 Stat. 3019)

H.R. 3547/P.L. 111–108

To designate the facility of the United States Postal Service located at 936 South 250 East in Provo, Utah, as the "Rex E. Lee Post Office Building". (Nov. 30, 2009; 123 Stat. 3020)

S. 748/P.L. 111–109

To redesignate the facility of the United States Postal Service located at 2777 Logan Avenue in San Diego, California, as the "Cesar E. Chavez Post Office". (Nov. 30, 2009; 123 Stat. 3021)

S. 1211/P.L. 111–110

To designate the facility of the United States Postal Service located at 60 School Street, Orchard Park, New York, as the "Jack F. Kemp Post Office Building". (Nov. 30, 2009; 123 Stat. 3022)

S. 1314/P.L. 111–111

To designate the facility of the United States Postal Service located at 630 Northeast Killingsworth Avenue in Portland, Oregon, as the "Dr. Martin Luther King, Jr. Post Office". (Nov. 30, 2009; 123 Stat. 3023)

S. 1825/P.L. 111–112

To extend the authority for relocation expenses test programs for Federal employees, and for other purposes. (Nov. 30, 2009; 123 Stat. 3024)

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