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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB03

Registration, Five-Year Terms

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Final rule.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act), regarding the registration of market agencies and dealers. Under the current regulations, there is no expiration date or renewal process for the registration of a market agency or dealer under the P&S Act. Under this final rule, a market agency or dealer's registration will not expire, provided that the market agency or dealer timely files its annual reports with GIPSA. This action will further assist USDA in regulating the business operations of market agencies and dealers through the effective enforcement of the P&S Act.

DATES: *Effective Date:* March 11, 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:

Background

The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the P&S Act. Under authority delegated to GIPSA by the Secretary of Agriculture in section 407(a) of the P&S Act (7 U.S.C. 228), we are authorized to write regulations necessary to carry out the provisions of the P&S Act.

Section 303 of the P&S Act (7 U.S.C. 203) requires that market agencies and dealers register with USDA. Section 201.10 of the regulations (9 CFR 201.10) currently requires that any person operating or desiring to operate as a market agency or dealer must apply for registration (Form P&SP 1000). When applying for a registration, the applicant must certify that its financial condition meets the P&S Act's requirements, list its type of business organization, state whether it will operate on a calendar year or fiscal year basis, identify the character of its business, and name the species of livestock it will handle. If registration is granted, a market agency or dealer receives an acceptance letter from GIPSA, which includes the registration number and the registration's effective date.

Under current § 201.10(b) of the P&S Act regulations (9 CFR 210.10(b)), GIPSA's Administrator may deny a registration if the Administrator believes that the applicant is unfit to engage in the business of a market agency and/or dealer. If a registration is denied, however, the applicant may request a formal hearing before a USDA administrative law judge who decides if the Administrator's decision should be overturned. Once issued by GIPSA, however, the registration does not expire.[1] After a registration is granted, the registration becomes inactive if the registrant notifies GIPSA that it has ceased business operations. Otherwise, a registration is effective indefinitely.

We have found that many market agencies and dealers registered under the P&S Act do not provide GIPSA with updates of information about their business operations. Without a registrant's current and accurate business information, we found that GIPSA could not adequately investigate complaints received from livestock sellers about a registrant's business practices, and therefore could not effectively enforce the P&S Act. As a result, GIPSA issued a notice of proposed rulemaking in the **Federal Register** on December 15, 2008 (73 FR 242), seeking comment on amending the regulations under the P&S Act to establish a 5-year time period for registrations, as well as renewal procedures. We also proposed a requirement that regulated entities file applications for registration and renewal in the geographic area where their primary place of business is located. The comment period ended on February 17, 2009.

[1] However, GIPSA may suspend a registration for cause.

Discussion of Comments and Final Action

GIPSA received one comment from a trade organization representing over 800 livestock auctions, dealers and related business members of the regulated industry. After reviewing the issues raised in this comment, we have determined that we will modify the proposed amendments in the final rule as noted below:

The commenter asserted that the annual reports required under section 201.97 of the P&S Act regulations (9 CFR 201.97) provide sufficient information on registrants' business operations. The commenter suggested that if there is additional information GIPSA needs, GIPSA should redesign the annual report to gather the necessary information. Upon reconsideration, GIPSA agrees with the commenter and will not impose any additional burden on entities by requiring a 5-year registration period. Instead, registrations will continue in effect indefinitely and only expire if a registered entity fails to timely file the annual report required under section 201.97 of the P&S Act regulations (9 CFR 201.97). GIPSA will therefore issue a final rule that does not establish a 5-year term for registrations.

The commenter also concluded that GIPSA's data management system is outdated and badly managed, after finding inconsistencies between its membership records and those of GIPSA. The commenter suggested that GIPSA improve its data management system as an alternative to requiring a 5-year registration term. Independent of this comment, GIPSA has already implemented an improved data management system that allows for better tracking and uniform oversight of regulated entities. This system consolidates information about registrants into one database, and includes registration information, annual report information, and records regarding compliance and violations. In addition, GIPSA created a new work unit whose sole function is to

administer the annual reporting requirements under the P&S Act and regulations.

The commenter further suggested that rather than require registrants to renew their registrations every 5 years, GIPSA could require that registrants provide notification when they plan to cease operating. GIPSA's objective in proposing to amend the registration requirements is to better account for those entities actively operating as dealers or market agencies. Relying on registrants to notify GIPSA when they cease operating would not provide complete and accurate information. GIPSA now believes that it would be able to maintain accurate records of entities currently operating subject to the P&S Act, without imposing new and additional burdens on registrants, provided that they file their annual reports timely.

The commenter also stated that the new requirements would not improve enforcement of the P&S Act; they would only interfere in the business of those who are already in compliance with the P&S Act. We disagree with the commenter's assertions that having registered entities provide information regarding their business is a new burden on registered entities. Persons operating subject to the P&S Act are required to report certain information about their current business operations. This issue, however, is now moot since we are not implementing the proposed requirement to renew registrations every 5 years.

The commenter also requested that a timeframe be established for GIPSA to process applications to ensure that registrations do not expire while waiting for agency action. This issue, however, is also now moot since we are not implementing the proposed requirement to renew registrations every 5 years. Again, registrations would continue in effect indefinitely, and only expire if a registered entity fails to timely file the annual report required under section 201.97 of the P&S Act regulations (9 CFR 201.97).

Finally, the commenter stated that if a registration is denied, GIPSA should fully describe the reasons for the denial. By not implementing the proposed requirement to renew registrations every 5 years, GIPSA will not be routinely considering whether to approve or deny registration renewal applications. Registrants, whose registrations expire because the required annual report is not filed within the time period allowed, will be required to file a new application for registration in order to continue in business. In cases of new registrations where the Administrator has reason to believe an applicant is unfit to conduct business under the P&S Act, the applicant will have an opportunity for a hearing, as the regulations currently allow, in which the applicant can show cause why its application should not be denied.

Based on the comment discussed above, we are therefore modifying proposed 201.10(e) (9 CFR 201.10(e)) in this final rule to provide that registrations continue indefinitely provided that the annual report is timely filed as required under section 201.97 of the P&S Act regulations (9 CFR 201.97). Failure to file an annual report by the date required in section 201.97 of the P&S Act regulations (9 CFR 201.97) will result in the issuance of a default notice. Thirty days after receipt of the default notice, a registrant's registration will expire if GIPSA does not receive the required annual report. If the Administrator has reason to believe that an applicant is unfit to engage in the activity for which the applicant seeks registration, a proceeding such as described in existing paragraph 201.10(b) (9 CFR 201.10(b)) shall be promptly initiated. This includes cases of new applications for registration as well as those filed by applicants whose registrations expired due to untimely filing of an annual report.

The one comment received did not address the other amendments to § 201.10 contained in the proposed rule. Therefore, the proposed amendments to § 201.10(a)–(d), and new paragraph (f) are finalized without change.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has designated this final rule as not significant for the purposes of Executive Order 12866.

We have determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). Most of the entities to which this rule applies do meet the applicable size standard for small entities in the Small Business Administration (SBA) regulations (13 CFR 121.201). For the North American Industry Classification System, codes that apply to animal production (subsector 112), the SBA size standard is $750,000 in average annual receipts. Based on the information that we have on bonded registrants, about 75 percent of the approximately 5,400 entities to which this final rule applies have annual receipts of less than $750,000. While the proposed rule would have imposed a burden of 30 minutes of effort to complete the application to renew registration every 5 years, GIPSA has determined that this final rule will impose no new burden since registrants must already submit up-to-date business information on their annual reports, which is covered under the currently approved OMB information collection 0580–0015. Only if a new application is filed after a registration expires due to untimely filing of an annual report will the estimated 30 minutes of effort to complete a registration application be necessary. Therefore, we have determined that this final rule will not have a significant economic impact on a substantial number of small entities.

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 with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Paperwork Reduction Act

In accordance with Office of Management and Budget regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are covered by this final rule were approved under OMB number 0580–0015 on February 21, 2008, and expire on February 28, 2011.

E-Government Act Compliance

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

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, we are amending 9 CFR part 201.10 as follows:

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

Authority: 7 U.S.C. 181–229c.

■ 2. Section 201.10 is amended to revise paragraphs (a) through (d) and to add paragraphs (e) and (f) to read as follows:

§ 201.10 Requirements and Procedures.

(a) Every person operating or desiring to operate as a market agency or dealer as defined in section 301 of the Act (7 U.S.C. 201) must apply for registration. To apply, such persons must file a properly executed application for registration on a form furnished by the Agency. Each applicant must file an application for registration with the regional office for the region where the applicant has his or her primary place of business, and file and maintain a bond as required in §§ 201.27 through 201.34 (9 CFR 201.27 through 201.34).

(b) If, upon review of an application, the Administrator has reason to believe the applicant is unfit to engage in the activity for which application has been made, a proceeding shall be instituted promptly affording the applicant the opportunity for a full hearing, in accordance with the Department's Rule of Practice Governing Formal Adjudicatory Proceedings (7 CFR Subpart H), to show cause why the application for registration should not be denied. If after the hearing the application is denied, as soon as the issue(s) that formed the basis of the denial have been remedied, the applicant may file a new application for registration.

(c) Any person regularly employed on salary, or other comparable method of compensation, by a packer to buy livestock for such packer is subject to the regulation requirements of this section. Such person must be registered as a dealer to purchase livestock for slaughter on behalf of the packer.

(d) Every person clearing or desiring to clear the buying operations of other registrants must apply for registration as a market agency providing clearing services by filing a properly executed application on a form furnished by the Agency, and file and maintain a bond as required in §§ 201.27 through 201.34.

(e) If an application for registration is granted, a market agency or dealer receives an acceptance letter from the Agency that issues the registration number and the effective date of the registration. Each registration issued in accordance with this section will not expire, provided that the registrant timely files its annual report with the Agency as required in section 201.97. Failure of a registrant to file an annual report by the date required in section 201.97 will result in the issuance of a default notice. Thirty days after receipt of the default notice, the registration will expire if the Agency does not receive an annual report from the registrant. A registrant who fails to renew its registration in a timely manner, and continues to operate, will be engaged in business subject to the Act without a valid registration in violation of section 303 of the Act (7 U.S.C. 203).

(f) Registrations that expire during a period of suspension imposed as a result of an order or injunction may be renewed, but the renewal will not be effective until the specified suspension period terminates.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–2845 Filed 2–8–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 0812241645–91422–01]

RIN 0694–AE52

Revisions to License Exception GOV To Provide Authorization for Exports and Reexports of Commodities for Use on the International Space Station (ISS)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR or Regulations) by revising an existing license exception to provide a new authorization for exports and reexports of certain commodities subject to the EAR when those commodities are intended for use on the International Space Station (ISS). This rule establishes specific terms and conditions with which exports or reexports must comply in order to take advantage of the new authorization. For example, an export or reexport undertaken in accordance with the new authorization must be consigned to an eligible recipient involved in the launch of the commodity to the ISS. This new authorization is limited to commodities that are subject to the EAR that are needed at a launch destination outside the United States on short notice. This rule defines 'short notice' as a requirement to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. This rule defines 'hatch-closure (final stowage)' as the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. BIS has determined there is a low risk of diversion and a high benefit for authorizing these types of transactions to proceed under a license exception.

DATES: *Effective Date:* This rule is effective February 9, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE52, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include "RIN 0694–AE52" in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE52.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AE52)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Gene Christiansen, Senior Engineer/Licensing Officer, Office of National Security and Technology Transfer Controls, telephone: (202) 482–2984.

SUPPLEMENTARY INFORMATION:

Background

This rule adds a new paragraph (d) to License Exception GOV in 15 CFR 740.11 (Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV)) to provide authorization for the export or reexport of certain commodities subject to the

EAR for use on the International Space Station (ISS). BIS has determined there is a low risk of diversion and a high benefit for authorizing these types of transactions to proceed under a license exception. This rule also updates the heading and introductory text of the section to reflect this new authorization.

What is the ISS?

The ISS is a research facility currently being assembled in outer space, the on-orbit construction of which began in 1998. The ISS is in a low-Earth orbit approximately 190 miles (350 km) above the surface of the Earth. It is a joint project among the space agencies of the United States, Russia, Japan, Canada, Europe and Italy. (The Italian Space Agency has separate contracts for various activities not done under the framework of the European Space Agency's (ESA) works.) The ISS is nearing completion of assembly, and is planned to remain in operation until at least 2016.

What has been the U.S. Government's involvement with the ISS?

The U.S. Government participation in this joint project includes developing and supplying many items that are used on the ISS, including many items that are subject to the jurisdiction of the EAR. For example, commodities subject to the EAR that are classified under Export Control Classification Number (ECCN) 9A004 (Space launch vehicles and "spacecraft") are used on the ISS, as are many other items subject to the Regulations. The U.S. Government, via the National Aeronautics and Space Administration (NASA), has international obligations pertaining to the ISS, including providing the overall program management and coordination for the design and development of the ISS and serving as the prime integrator for the ISS.

Why is this new authorization needed under License Exception GOV?

The ISS is serviced primarily by the U.S. Space Shuttle and the Russian manned Soyuz spacecraft and unmanned Progress spacecraft. However, NASA has announced its intention to discontinue the U.S. Space Shuttle program in the near future, so the ISS will have to rely increasingly on the Russian Soyuz and Progress spacecraft and other non-U.S. spacecraft, such as ESA's Automated Transfer Vehicle (ATV) and Japan's H–II Transfer Vehicle (HTV), until additional U.S. delivery vehicles become available. On March 9, 2008, ESA launched its first Automated Transfer Vehicle (ATV) to the ISS via its Ariane 5 launch system, with other ATVs to follow. On September 10, 2009 (EDT), Japan launched its first of several HTVs to the ISS via its H–IIB launch vehicle. Because certain items used on the ISS are subject to the EAR, the Commerce Department and other agencies of the U.S. Government involved in reviewing BIS export license applications have worked with NASA when export licenses have been required for items eventually destined to the ISS, but launched from a foreign country. For example, commodities subject to the EAR classified under ECCN 9A004 are controlled for NS1 reasons, meaning they are subject to a license requirement when exported or reexported to Russia. However, even when BIS license applications are given expedited review, there are certain processing time constraints that cannot be overcome (i.e., even with expedited review, the minimum time necessary for BIS to process and approve the license application may not be fast enough to accommodate certain launch opportunities).

Given the unique environment in which the ISS exists, and the potential threat to its residents posed by even the most basic part wearing out or breaking, it is essential that NASA and other official suppliers of items used on the ISS be able to export or reexport those items when they are needed to supply or repair the ISS. The U.S. Government is committed to safety of flight and has various provisions under the EAR to help ensure safety of flight for civil aircraft. The ISS is unique in that it is constantly in operation and, therefore, the safety of flight concerns are significantly increased when any issues arise with parts or components used on the ISS. This engenders a need for a more expedited process to authorize these specific transactions for commodities that need to be delivered to the ISS as soon as possible.

What types of changes are made to the EAR?

In § 740.11 (Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV)), this rule adds a paragraph (d) to provide a new authorization for the export or reexport of commodities subject to the EAR that are classified under ECCN 9A004 for use on the ISS. Specifically, this rule provides a new authorization for commodities classified under ECCN 9A004 that are subject to the EAR that are needed at a launch destination outside of the U.S. on short notice. This rule defines 'short notice' as a requirement to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. 'Hatch-closure (final stowage)' means the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. As noted above, in many cases, the commodities being exported or reexported under these provisions will be needed for a launch destined to the ISS within days, not months. To provide for unexpected delays in a launch schedule, such as for mechanical failures in a launch vehicle or weather related delays, this rule authorizes the retention of the commodities at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned, or a license application be submitted to BIS for further disposition of the commodity(ies). This rule also provides for a one-time six (6) month extension of this time limit provided the exporter or the person that has control of the items submits written notification to BIS requesting a six (6) month extension and noting the reason for the delay.

What commodities may be exported or reexported under this new authorization?

Only commodities classified under ECCN 9A004 that are subject to the EAR are eligible to be exported or reexported under this new paragraph of License Exception GOV.

The following commodities are among those that may not be exported or reexported under this new authorization:

Parts and components used by overseas manufacturers in the construction, assembly, fabrication, etc. of items used on the ISS. The export or reexport of parts and components to overseas manufacturers must be duly authorized by other provisions of the EAR; and

Any commodity restricted by the provisions of § 740.2 (Restrictions on All License Exceptions) of the EAR.

Who may export or reexport under this new authorization?

In the vast majority of cases, the commodities exported for missions to the ISS will be exported by NASA to the launch countries. However, to account

for certain times when a NASA supplier may need to export or reexport a commodity to a launch destination outside of the U.S., this exception is not limited to NASA as the exporter or reexporter.

What destinations are eligible to receive commodities under this new authorization?

Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

When may this authorization be used?

There must also be a requirement to have a commodity at the scheduled launch site for hatch-closure (final stowage) no more than 45 days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. Acceptable forms of written notification include, but are not limited to: Email, fax, or letter. Exporters and reexporters must retain a record as per the Recordkeeping requirements in part 762 of the EAR of this written notification requesting that specific commodities be supplied on short notice for a supply mission to the ISS, including the date the exporter or reexporter received complete documentation (i.e., the day on which the 45-day clock begins under paragraph (d) of this section).

What space launch vehicles (SLVs) are eligible?

This new authorization is limited to commodities that will be delivered to the ISS using United States, Russian, French (ESA), or Japanese space launch vehicles (SLVs). SLVs from any other countries are specifically excluded from this new authorization, even if one of those countries were to appear on NASA's list as an eligible destination.

Who may receive commodities under this new authorization?

The persons who may receive or have access to commodities authorized under this new paragraph (d) are limited to eligible recipients involved in the launch of the commodities to the ISS. An eligible recipient may be the space agency of one of the member countries of the ISS project, but may also be other persons who are acting on behalf of one of those member countries in support of the ISS. For example, the Russian company S.P. Korolev Rocket and Space Corporation Energia coordinates the launch of items to the ISS from Russia, so it is an eligible recipient even though it is not a space agency. This rule specifically excludes from the list of eligible recipients any national of a country listed in Country Group E:1 in Supplement No. 1 to part 740. In addition, no person may receive commodities authorized under paragraph (d) if that person is subject to any end-user or end-use control described in part 744 of the EAR, including the Entity List in Supplement No. 4 to part 744.

Finally, this rule adds recordkeeping requirements with which persons using paragraph (d) of License Exception GOV must comply in order to use this new authorization.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.,* unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control number 0694–0088, "Multi-Purpose Application," form BIS–748. This collection carries a burden hour estimate of 58 minutes to prepare and submit. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase slightly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. *See* 5 U.S.C. 553(a)(1). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable.

List of Subjects in 15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 740 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Section 740.11 is amended:

■ a. By revising the heading of the section;

■ b. By revising the introductory text of the section; and

■ c. By adding paragraph (d), to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

This License Exception authorizes exports and reexports for international nuclear safeguards; U.S. government agencies or personnel, and agencies of cooperating governments; international inspections under the Chemical Weapons Convention; and the International Space Station.

* * * * *

(d) *International Space Station (ISS)*—(1) *Scope.* This paragraph (d) authorizes exports and reexports required on short notice of certain commodities subject to the EAR that are classified under ECCN 9A004 to launch sites for supply missions to the International Space Station (ISS). The ISS is a research facility in a low-Earth orbit approximately 190 miles (350 km) above the surface of the Earth. The ISS is a joint project among the space

agencies of the United States, Russia, Japan, Canada, Europe and Italy.

(2) *Eligible commodities.* Any commodity subject to the EAR that is classified under ECCN 9A004 and that is required for use on the ISS on short notice.

Note 1 to paragraph (d)(2): This license exception is not available for the export or reexport of parts and components to overseas manufacturers for the purpose of incorporation into other items destined for the ISS.

Note 2 to paragraph (d)(2): For purposes of this paragraph (d), 'short notice' means the exporter is required to have a commodity manifested and at the scheduled launch site for hatch-closure (final stowage) no more than forty-five (45) days from the time the exporter or reexporter received complete documentation. 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS. For purposes of this paragraph (d), 'hatch-closure (final stowage)' means the final date specified by a launch provider by which items must be at a specified location in a launch country in order to be included on a mission to the ISS. The exporter or reexporter must receive the notification to supply the commodity for use on the ISS in writing. That notification must be kept in accordance with paragraph (d)(6) of this section and the Recordkeeping requirements in part 762 of the EAR.

(3) *Eligible destinations.* Eligible destinations are France, Japan, Kazakhstan, and Russia. To be eligible, a destination needs to have a launch for a supply mission to the ISS scheduled by a country participating in the ISS.

(i) *Authorization to retain commodity at or near launch site for up to six months.* If there are unexpected delays in a launch schedule for reasons such as mechanical failures in a launch vehicle or weather, commodities exported or reexported under the provisions of this paragraph (d) are authorized to be retained at or near the launch site for a period of six (6) months from the time of initial export or reexport before the commodities must be destroyed, returned to the exporter or reexporter, or be the subject of an individually validated license request submitted to BIS to authorize further disposition of the commodities.

(ii) *Authorization to retain commodity abroad at launch country beyond six months.* If, after the commodity is exported or reexported under this authorization, a delay occurs in the launch schedule that would exceed the 6-month deadline in paragraph (d)(3)(i) of this section, the exporter or reexporter or the person in control of the commodities in the launch country may request a one-time 6-month extension by submitting written notification to BIS requesting a 6-month extension and noting the reason for the delay. If the requestor is not contacted by BIS within 30 days from the date of the postmark of the written notification and if the notification meets the requirements of this subparagraph, the request is deemed granted. The request must be sent to BIS at the address listed in part 748 of the EAR and should include the name and address of the exporter or reexporter, the name and address of the person who has control of the commodity, the date the commodities were exported or reexported, a brief product description, and the justification for the extension. To retain a commodity abroad beyond the time authorized by paragraph (d)(3)(i) of this section, the exporter, reexporter or person in control of the commodity must request authorization by submitting a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS 90 days prior to the expiration of the 6-month extension period.

(C) *Items not delivered to the ISS because of a failed launch.* If the commodities exported or reexported under this paragraph (d) of this section are not delivered to the ISS because a failed launch causes the destruction of the commodity prior to its being delivered, exporters and reexporters must make note of the destruction of the commodities in accordance with the recordkeeping requirements under paragraph (d)(6)(ii) of this section and part 762 of the EAR.

(4) *Requirement for commodities to be launched on an eligible space launch vehicle (SLV).* Only commodities that will be delivered to the ISS using United States, Russian, ESA (French), or Japanese space launch vehicles (SLVs) are eligible under this authorization. Commodities to be delivered to the ISS using SLVs from any other countries are excluded from this authorization.

(5) *Eligible recipients.* Only persons involved in the launch of commodities to the ISS may receive and have access to commodities exported or reexported pursuant to this paragraph (d), except that:

(i) No commodities authorized under paragraph (d) of this section may be exported, reexported or transferred (in-country) to any national of an E:1 country listed in Supplement No. 1 to part 740 of the EAR, and

(ii) No person may receive commodities authorized under paragraph (d) of this section if they are subject to an end-user or end-use control described in part 744 of the EAR, including the entity list in Supplement No. 4 to part 744.

(6) *Recordkeeping requirements.* Exporters and reexporters must maintain records regarding exports or reexports made using the authorization in paragraph (d) of this section as well as any other applicable recordkeeping requirements under part 762 of the EAR.

(i) Exporters and reexporters must retain a record of the initial written notification they received requesting these commodities be supplied on short notice for a supply mission to the ISS, including the date the exporter or reexporter received complete documentation (*i.e.,* the day on which the 45-day clock begins under paragraph (d) of this section). 'Complete documentation' means the exporter or reexporter received the technical description of the commodity and purpose for use of the commodity on the ISS.

(ii) Exporters and reexporters must maintain records of the date of any exports or reexports made using the authorization in paragraph (d) of this section *and* the date on which the commodities were launched into space for delivery to the ISS. If the commodities exported or reexported under paragraph (d) of this section are not delivered to the ISS because of a failed launch whereby the item is destroyed prior to being delivered to the ISS, this must be noted for recordkeeping purposes.

(iii) The return or destruction of defective or worn out parts or components exported pursuant to paragraph (d) of License Exception GOV is not required under this authorization. However, if defective or worn out parts or components originally exported or reexported pursuant to this paragraph (d) are returned from the ISS, then those parts and components may be either: returned to the original country of export or reexport; destroyed; or reexported or transferred (in-country) to a destination that has been designated by NASA for conducting a review and analysis of the defective or worn part or component. Documentation for this activity must be kept for recordkeeping purposes. No commodities that are subject to the EAR may be returned to a country listed in Country Group E:1 in Supplement No. 1 to part 740 or to any person if that person is subject to an end-user or end-use control described in part 744 of the EAR under the provisions of this paragraph (d)(6)(iii) of this section or any other provision of this paragraph (d) of this section. For purposes of paragraph (d) of this section, a 'defective or worn out' part or component is a part or component that

no longer performs its intended function.

(7) *Reexports to an alternate launch country.* If a mechanical or weather related issue causes a change from the scheduled launch country to another foreign country after a commodity was exported or reexported under this paragraph (d), then that commodity may be subsequently reexported to the new scheduled launch country, provided all of the terms and conditions of paragraph (d) of this section are met, along with any other applicable EAR provisions. In such instances, the 6-month time limitation described in paragraph (d)(3)(i) of this section would start over again at the time of the subsequent reexport transaction. Note that if the subsequent reexport may be made under the designation No License Required (NLR) or some other authorization under the EAR, a reexporter does not need to rely on the provisions contained in this paragraph (d).

Dated: February 1, 2010.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2010–2579 Filed 2–8–10; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0706; FRL–9111–5]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Removal of NO_X SIP Call Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision removes West Virginia's nitrogen oxides (NO_X) SIP Call rules. EPA is approving this revision to remove West Virginia's NO_X SIP Call rules in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 12, 2010 without further notice, unless EPA receives adverse written comment by March 11, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0706 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0706, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0706. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

On July 20, 2009, the State of West Virginia submitted a formal revision to its SIP. The SIP revision removes West Virginia's NO_X SIP Call rules. West Virginia's NO_X SIP Call rules, approved into the West Virginia SIP on May 10, 2002 (67 FR 31733) and September 28, 2006 (71 FR 56881), established West Virginia's NO_X Budget Trading Program and set forth requirements for its non-trading sources, respectively. The former enabled West Virginia to participate in the EPA-administered regional NO_X budget trading program under the NO_X SIP Call. However, EPA discontinued the NO_X SIP Call trading program after the 2008 ozone season, and starting in 2009, began administration of the trading programs under the Clean Air Interstate Rule (CAIR). CAIR established three separate emissions trading programs. One of these, the CAIR ozone season NO_X trading program, applies to the electric generating units (EGUs) that are subject to the NO_X SIP Call but does not apply to the non-EGUs that were also trading sources under the NO_X SIP Call. To help States address these sources, CAIR provided States with the flexibility to include the non-EGUs as part of their CAIR ozone season NO_X trading program. West Virginia chose to bring these non-EGUs into its CAIR ozone season NO_X trading program by including them in regulation 45CSR40—Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Oxides CAIR. In addition, West Virginia chose to recodify the provisions for its non-trading non-EGUs (internal combustion engines and cement kilns) that were

included in 45CSR1 into 45CSR40. On August 4, 2009 (74 FR 38536), EPA approved West Virginia's CAIR trading programs into the West Virginia SIP. West Virginia's NO_X SIP Call requirements have therefore been subsumed by the State's CAIR ozone season NO_X trading program.

II. Summary of SIP Revision

West Virginia met its NO_X SIP Call requirements through two regulations: 45CSR1—Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units As a Means to Mitigate Transport of Ozone Precursors; and 45CSR26—NO_X Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units. This SIP revision removes these two regulations. West Virginia is meeting its NO_X SIP Call emission reduction requirements by its approved CAIR ozone season NO_X trading program, codified in 45CSR40.

III. Final Action

EPA is approving the SIP revision submitted by West Virginia to remove its NO_X SIP Call rules 45CSR1 and 45CSR26. West Virginia continues to meet its NO_X SIP Call requirements through its SIP-approved CAIR ozone season NO_X trading program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules' section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 12, 2010 without further notice unless EPA receives adverse comment by March 11, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action to approve the West Virginia SIP revision that removes the State's NOx SIP Call rules may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 22, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

§ 52.2520 [Amended]

■ 2. In § 52.2520, the table in paragraph (c) is amended by removing the entries for 45CSR Series 1 and 45CSR Series 26 in their entirety.

[FR Doc. 2010–2675 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0010; FRL–9111–7]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Carbon Monoxide Emissions From Basic Oxygen Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revision, State of Maryland SIP Revision #05–08, replaces the current SIP requirements for the control of carbon monoxide (CO) emissions from basic oxygen furnaces (BOFs) at steel mills in the State of Maryland with a new, equivalent CO standard. EPA is approving this revision to the Maryland SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 12, 2010 without further notice, unless EPA receives adverse written comment by March 11, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0010 by one of the following methods:

A. *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0010, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

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

I. Background

On October 31, 2005, the State of Maryland submitted a formal revision to its SIP. The SIP revision consists of establishment of a new standard for CO emissions from BOFs at steel mills. This SIP revision replaces the current SIP requirements for the control of CO emissions from BOFs, which Maryland had previously withdrawn from the Code of Maryland Administrative Regulations (COMAR). However, those requirements were not withdrawn from Maryland's SIP.

CO is generated in large quantities in BOFs at steel mills. BOFs contain hot metal from the blast furnace and scrap metal which is heated with oxygen to produce molten metal. The molten metal is ultimately cast into steel slabs. The BOFs are equipped with a gas collection system or hoods that exhaust the gases into a water scrubber system that is used primarily for control of particulate matter.

II. Summary of SIP Revision

This SIP revision establishes a new CO standard for BOFs at steel mills by adding new regulation COMAR 26.11.10.05–1 to the Maryland SIP. This new regulation requires affected sources to demonstrate that the CO concentration in its gas stream does not exceed 1 percent by volume and to demonstrate compliance by conducting an initial stack test and additional stack tests every 2.5 years. COMAR 26.11.10.05–1 replaces the CO emission requirements currently in the Maryland SIP, COMAR 26.11.10.06[2].

COMAR 26.11.10.06[2] required a person who operated a blast furnace, grey iron cupola or BOF to burn the gas with excess oxygen at not less than 1300 °F for at least 0.3 seconds in a direct flame afterburner. In addition, COMAR 26.11.10.06[2] allowed an equivalent control method which reduces the concentration of CO in the effluent to 1.0 percent by volume or less. Maryland withdrew that regulation because: (1) Blast furnace gas is not controlled but is used as fuel in on site fuel burning equipment; (2) there are no grey iron cupolas located at steel mills and cupolas not located at steel mills are

subject to the CO emissions requirements in COMAR 26.11.06 and (3) CO emissions from BOFs are not controlled in that manner. When the furnaces are operating, the flames extend into the hood and incinerate the CO before it is exhausted through the scrubbers.

The 1 percent by volume CO emissions limit in the new regulation, COMAR 26.11.10.05–1, is equivalent to the limit allowed by COMAR 26.11.10.06[2]. In addition, replacing COMAR 26.11.10.06[2] with COMAR 26.11.10.05–1 strengthens the Maryland SIP by clarifying the standard for CO emissions from BOFs and removing extraneous requirements. Therefore, EPA is approving COMAR 26.11.10.05–1 in the Maryland SIP, and removing COMAR 26.11.10.06[2].

III. Final Action

EPA is approving Maryland's SIP Revision #05–08, which revises the Maryland SIP by adding a new regulation, COMAR 26.11.10.05–1. This new regulation establishes standards for CO emissions from BOFs at steel mills in Maryland. EPA is approving this revision to the Maryland SIP in accordance with the requirements of the CAA. EPA is also removing the existing requirements for the control of CO emissions from BOFs, COMAR 26.11.10.06[2], from the Maryland SIP. COMAR 26.11.10.05–1 replaces COMAR 26.11.10.06[2] and requires an equivalent level of control.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register,** EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 12, 2010 without further notice unless EPA receives adverse comment by March 11, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action, which replaces existing requirements for the control of CO emissions from BOFs at steel mills in Maryland with a new, equivalent standard for CO emissions from steel mill BOFs, 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, Carbon monoxide, Incorporation by reference.

Dated: January 22, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by removing the entry for COMAR 26.11.10.06[2] and by adding new COMAR 26.11.10.05–1 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.10 Control of Iron and Steel Production Installations				
*	*	*	*	*
26.11.10.05–1	Control of Carbon Monoxide Emissions from Basic Oxygen Furnaces.	9/12/05	2/9/10	[Insert page number where the document begins].
*	*	*	*	*

[FR Doc. 2010–2678 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0113–200709(a); FRL–9098–5]

Approval and Promulgation of Implementation Plans Georgia: State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA)

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Georgia State Implementation Plan (SIP), submitted by the Georgia Environmental Protection Division (GA EPD) on September 26, 2006, with a clarifying revision submitted on November 6, 2006. The revisions include multiple modifications to Georgia's Air Quality Rules found at Chapter 391–3–1. These revisions are part of Georgia's strategy to meet the national ambient air quality standards (NAAQS). The revisions include, but are not limited to, changes to Chapters such as "Definitions;" "Emissions Limitations and Standards;" "Open Burning;" "Exemptions;" "Permits;" and "Regulatory Exceptions." EPA is approving Georgia's SIP revisions pursuant to section 110 of the Clean Air Act (CAA).

EPA is not acting on revisions to rules 391–3–1–.01(qqqq), 391–3–1–.02(2)(zz), 391–3–1–.02(2)(mmm), 391–3–1–.02(6)(a), 391–3–1–.03(6)(g), and 391–3–1–.03(6)(i) at this time. EPA is also not acting on revisions to rule 391–3–1–02(2)(ooo), as Georgia has submitted a revised version of the rule. Additionally, we are not acting on several revisions to the September 26, 2006, SIP submittal, that are not part of the federally approved SIP.

DATES: This direct final rule is effective April 12, 2010 without further notice, unless EPA receives adverse comment by March 11, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number, "EPA–R04–OAR–2007–0113," by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* "EPA–R04–OAR–2007–0113," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID Number, "EPA–R04–OAR–2007–0113." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center home page at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some

information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

Table of Contents

I. Background
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SUPPLEMENTARY INFORMATION:

I. Background

On September 26, 2006, with a clarifying revision submitted on November 6, 2006, GA EPD submitted proposed SIP revisions to EPA for review and approval into the Georgia SIP. The revisions include the following changes made by the State of Georgia to its Air Quality Rules, found at Chapter 391–3–1. The changes that were made to update Georgia's regulations include, but are not limited to, "Definitions;" "Emissions Limitations and Standards;" "Open Burning;" "Exemptions;" "Permits;" and "Regulatory Exceptions." The changes are discussed below.

EPA is not acting on revisions to rules 391–3–1–.01(qqqq), 391–3–1–.02(2)(zz), 391–3–1–.02(2)(mmm), 391–3–1–.02(6)(a), 391–3–1–.03(6)(g), and 391–3–1–.03(6)(i) at this time. EPA is also not acting on revisions to rule 391–3–1–02(2)(ooo), as Georgia has submitted a revised version of the rule. Additionally, we are not acting on revisions to rules 391–3–1–.02(ppp), 391–3–1–.02(8)(a), 391–3–1–.02(9), 391–3–1–.03(9), 391–3–1–.03(10)(b)2, 391–3–1–.03(10)(e)(6), and 391–3–1–.03(10)(g)2, as they are not part of the federally approved SIP.

II. Summary of Action

Rule 391–3–1–.01 "Definitions"

1. 391–3–1–.01(llll) "Volatile Organic Compound"

Georgia is amending its definition of volatile organic compounds (VOC) by inserting five additional compounds in the list of compounds excluded from the definition of VOC. GA EPD is taking an action that was similarly approved by the EPA on November 29, 2004 (69 FR 69298). The revision adds the five compounds to the list of those excluded from the definition of VOC, on the basis that they make a negligible contribution to ozone formation.

EPA's policy is that compounds of carbon with a negligible level of reactivity need not be regulated to reduce ozone (42 FR 35314, July 8, 1977). EPA determines whether a given carbon compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s), and excludes them from the definition of VOC. The chemicals on this list are often called "negligibly reactive." EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

The revision updates Georgia's definition of VOC, to be consistent with the Federal definition of VOC, by adding: 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$) (known as HFE–7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluro-2-(trifluoromethyl) hexane (known as HFE–7500); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC–227ea); methyl formate ($HCOOOCH_3$); and t-butyl acetate to its list of compounds excluded from the definition of VOC. We are approving this rule to maintain consistency with the Federal definition of VOC, pursuant to Section 110 of the CAA. This rule change became State effective on July 20, 2005.

2. 391–3–1–.01(nnnn) "Procedures for Testing and Monitoring Sources of Air Pollutants"

Georgia is amending the effective date to the definition of "Procedures for Testing and Monitoring Sources of Air Pollutants" to reflect the current version, dated January 1, 2006. The purpose of the document is to identify those procedures used for the purposes of testing and monitoring air pollutant sources. This revision is approvable because it merely updates a definition in the "Definitions" section of Georgia's rule, and is consistent with Section 110 of the CAA. This revision became State effective on July 13, 2006.

Rule 391–3–1–.02 "Provisions"

1. 391–3–1–.02(2) "Emission Standards"

a. 391–3–1–.02(2)(d) "Fuel-Burning Equipment"

Georgia is amending subparagraphs 1(ii) and 2(ii), relating to "Fuel Burning Equipment," to correct the existing rule. The revision clarifies the existing rule language regarding applicability for boiler sizes. The language previously read "for equipment equal to or greater than 10 million BTU heat input per hour, or equal to or less than 2,000 million BTU heat input per hour * * *" The intent of the rule is for the limit in subparagraph (2)(d)1(ii) to apply to equipment with both a heat input of greater than or equal to 10 Million British thermal units per hour (MMBtu/hr) and less than or equal to 2,000 MMBtu/hr constructed on or before January 1, 1972. Similarly, subparagraph 2(d)2(ii) will be limited to apply to boiler sizes equal to or greater than 10 MMBtu/hr, and (rather than or) equal to or less than 250 MMBtu/hr, constructed after January 1, 1972. EPA is approving this revision to correct an inadvertent error by revising the language in this subparagraph, consistent with Section 110 of the CAA. The revision became State effective on July 20, 2005.

b. 391–3–1–.02(2)(tt) "VOC Emissions From Major Sources"

Georgia is amending paragraph (2), titled "Emission Limitations and Standards," subparagraph (tt), relating to "VOC Emissions from Major Sources," by adding new subparagraphs (tt)6 and (tt)7, relating to Reasonable Available Control Technology (RACT) demonstrations.

The revised rule requires Georgia to issue a public notice to allow the public an opportunity for comment, for any RACT demonstration approved pursuant to this subsection of Georgia's regulation, relating to VOC emission from major sources. The revision will also require GA EPD to submit all approved RACT determinations to EPA as a SIP revision. EPA is approving this revision to be consistent with Section 110 of the CAA, as it allows the public an opportunity to comment on, and requires EPA approval of, any RACT demonstration or revision to a RACT demonstration. This revision became State effective January 9, 2005.

c. 391–3–1–.02(2)(yy) "Emissions of Nitrogen Oxides From Major Sources"

Georgia is amending paragraph (2), titled "Emission Limitations and Standards," subparagraph (yy), relating to "Emissions of Nitrogen Oxides from Major Sources," by adding new subparagraphs (yy)7 and (yy)8.

The revised rule requires Georgia to issue public notice and provide an opportunity for public comment for RACT determinations approved pursuant to this subsection of Georgia's regulation, relating to nitrogen oxides (NO_X) emissions from major sources. The revision also states that Georgia will submit any modifications or changes to the approved RACT demonstrations to EPA as a revision to the SIP. EPA is approving this revision to be consistent with Section 110 of the CAA, as it allows the public an opportunity to comment on, and requires EPA approval of, any RACT demonstration or revision to a RACT demonstration. This revision became State effective on January 9, 2005.

d. 391–3–1–.02(2)(rrr) "NO_X Emissions from Small Fuel-Burning Equipment"

Georgia is adding a new rule (rrr), titled "NO_X Emissions from Small Fuel-Burning Equipment" to Chapter 391–3–1–.02(2) "Emission Limitations and Standards." This new rule establishes new RACT requirements for sources emitting NO_X emissions in excess of one ton per year (tpy), or 25 tpy in the Atlanta 1-hour ozone nonattainment area (or "Atlanta Area"). This was a result of the January 1, 2004, reclassification (68 FR 55469, September 26, 2003) of the Atlanta 1-hour ozone nonattainment area from "serious" to "severe." Subparagraph 1 explains the requirements for performing an annual tune-up and documentation of the maintenance records. It also requires that only natural gas be used during the months of May through September. An affected unit is exempt from the requirements of subparagraph 1, provided the owner or operator submits the documentation specified in the facility's permit confirming the unit will not be operated during the months of May through September. The Atlanta Area is currently nonattainment for the 1997 8-hour ozone standard, therefore, these requirements continue to apply to the Atlanta Area in accordance with anti backsliding provisions set forth in the CAA. EPA is approving these revisions consistent with Section 110 of the CAA. These revisions became State effective on January 9, 2005, and March 27, 2006.

2. 391–3–1–.02(4) "Ambient Air Standards"

Georgia is amending subparagraph (4)(b)4, relating to sulfur dioxide, to correct an error in the standard condition for temperature. The revision changes the standard condition in subparagraph 4 to read as 25 degrees Celsius, rather than 26 degrees. This revision became State effective on July 20, 2005. Georgia is also amending paragraph (4), subparagraphs (4)(c) and (e), relating to particulate matter and ozone, respectively. The revisions remove the outdated air quality standards, and update the rules to reflect the 1997 NAAQS for these pollutants. (July 18, 1997, 62 FR 38652). The 1997 standard was set at 50 micrograms per cubic meter ($\mu g/m^3$) for PM_{10}. The 1997 standards for 24-hour $PM_{2.5}$ and annual $PM_{2.5}$ were set at 65 $\mu g/m^3$ and 15 $\mu g/m^3$, respectively. This revision is being approved to maintain consistency with the current NAAQS under Section 110 of the CAA at the time the submission was provided to EPA. This revision became State effective on January 9, 2005.

3. Rule 391–3–1–.02(5) "Open Burning"

Georgia is amending paragraph (5) relating to "Open Burning." The revision deletes the definition of "slash burning," and revises the definition of "prescribed burning" to be consistent with the Georgia Prescribed Burning Act. What was previously considered "slash burning" is now included in the definition for "prescribed burning." Georgia is also revising subparagraph (b)2 to add the counties of Bibb, Catoosa, Columbia, Crawford, Houston, Peach, Richmond, Twiggs, and Walker to those that have open burning restrictions. Additionally, Georgia is adding language to subparagraph (5)(e), to require Federal facilities not mandated to obtain burn permits from the Georgia Forestry Commission, to institute measures to ensure prescribed burning is not conducted during the months of May through September. EPA is approving these revisions to clarify language, as well as to be consistent with the counties that are part of the current 1997 8-hour ozone nonattainment area, pursuant to Section 110 of the CAA. This revision became State effective on July 13, 2006.

Rule 391–3–1–.03 "Permits"

1. 391–3–1–.03(6) "Exemptions"

a. 391–3–1–.03(6)(b) "Combustion Equipment"

Georgia is revising subparagraph (6)(b)8 to correct a typographical error in the combustion equipment exemption for air curtain incinerators used for land clearing at a construction site, which became State effective on April 19, 2006. Georgia is also revising subparagraph (6)(b)11, to clarify language relating to emergency generators used for peaking power. EPA is approving this revision, to clarify language, under Section 110 of the CAA. This rule became State effective on July 13, 2006.

The State is also changing the permit exemption requirements in subparagraph (6)(b)11 for stationary engines used for emergency generation, located within 45 north Georgia counties, such that only engines with a rated capacity of less than 100 kilowatts shall be exempt, rather than the previous exemption at 300 kilowatts and below. This rule became State effective on March 27, 2006.

Additionally, Georgia is revising paragraph (6), subparagraph (b)11(v)(I). The revision modifies the definition of "emergency generator" which states the generator may provide back-up power when power from the local utility is interrupted, and which operates for less than 500 hours-per-year, by adding the counties of Banks, Barrow, Bartow, Butts, Carroll, Chattanooga, Cherokee, Clarke, Clayton, Cobb, Coweta, Dawson, Dekalb, Douglas, Fayette, Floyd, Forsyth, Fulton, Gordon, Gwinnett, Hall, Haralson, Heard, Henry, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Newton, Oconee, Paulding, Pickens, Pike, Polk, Putnam, Rockdale, Spalding, Troup, Upson, and Walton, where such generators may only operate less than 200 hours-per-year. The additional counties are part of the current 1997 8-hour ozone nonattainment area. Therefore, this revision is being approved, consistent with maintenance of the NAAQS, under Section 110 of the CAA. This rule became State effective on March 27, 2006.

Finally, Georgia is adding new subparagraphs (6)(b)14 and (6)(b)15. These paragraphs exempt temporary stationary sources that install boilers and electric generators to replace the source's primary boiler or generator during periods of maintenance or repair, from obtaining a permit for the temporary equipment. Actual and potential emissions of the temporary sources must not exceed that of the main source, and temporary fuel-burning equipment may not remain at a location for longer than 180 consecutive days. EPA is approving the revised permit exemptions as actual and potential emissions of the temporary source may not exceed that of the main source, consistent with Section 110(l) of

the CAA. This revision became State effective on April 19, 2006.

b. 391–3–1–.03(6)(j) "Construction Permit Exemption for Pollution Control Projects"

Georgia is adding a new subparagraph (j) relating to "Exemptions." The revision adds an exemption for pollution control projects from the requirement to obtain a construction permit, under GA EPD's minor new source permitting regulations. This rule applies to minor sources only, and limits any emissions increases from the pollution control project to below the major source threshold for all pollutants. A project subject to major new source review permitting does not qualify for this exemption. EPA is approving the revised permit exemption, as emissions may not exceed the limits set for major sources, and is consistent with Section 110 of the CAA. This revision became State effective on July 13, 2006.

2. 391–3–1–.03(11) "Permit by Rule"

a. 391–3–1–.03(11)(b)3(i) "Permit by Rule Standards"

Georgia is revising subparagraph (b)3(i) to clarify the language for the specific equipment covered by the permit-by-rule for on-site power generation. Specifically, the language "fuel-burning equipment" is being replaced by "internal combustion engines," to best describe the equipment. This rule revision is being approved to more clearly define the equipment named in this subparagraph, and is consistent with Section 110 of the CAA. The rule became State effective on July 20, 2005.

b. 391–3–1–.03(11)(b)5(i) "Permit by Rule Standards"

Georgia is amending subparagraph (b)5(i) to clarify the specific equipment covered by permit-by-rule for hot mix asphalt plants. Specifically, the language "with external combustion fuel-burning equipment rated as less than or equal to 100 million BtU per hour" is replaced by "hot mix asphalt facilities," to best describe the facilities. This rule revision is being approved to more clearly define the equipment named in this subparagraph, and is consistent with Section 110 of the CAA. The revision became State effective on July 20, 2005.

Rule 391–3–1–.05 "*Regulatory Exceptions*"

Georgia is repealing Rule 391–3–1–.05 "Regulatory Exceptions" on the basis that it is unnecessary and non-mandatory. The basis of the rule was to allow the Director of GA EPD to grant exceptions to particular requirements of any rule or regulation. In order for a regulatory exception to be granted, it must first be submitted to EPA, and approved as a SIP revision. Therefore, this rule is repealed in its entirety. The repeal of this revision is being approved, as any regulatory exception must first be submitted to EPA for approval, pursuant to Section 110 of the CAA. This revision became State effective on July 13, 2006.

III. Final Action

EPA is taking direct final action to approve the aforementioned revisions, specifically, Air Quality Rules Chapter 391–3–1, into the Georgia SIP. The revision was submitted by GA EPD on September 26, 2006, with a clarifying revision submitted on November 6, 2006. These revisions meet CAA requirements and are consistent with EPA policy and regulations.

EPA is publishing this rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should adverse comments be filed. This rule will be effective April 12, 2010 without further notice unless the Agency receives adverse comments by March 11, 2010.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 12, 2010 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 11, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section § 52.570(c) is amended by

■ a. Revising the entries for "391–3–1–.01, and "391–3–1–.02(2)(d)," "391–3–1–.02(2)(tt)," "391–3–1–.02(2)(yy)," "391–3–1–.02(2)(rrr)," "391–3–1–.02(4)," "391–3–1–.02(5)," and "391–3–1–.03;"

■ b. Removing the entry for "391–3–1–.05," to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	7/13/06	2/9/09 [Insert citation of publication]	
*	*	*	*	*
391–3–1–.02(2)(d)	Fuel-burning Equipment	7/20/05	2/9/09 [Insert citation of publication]	
*	*	*	*	*
391–3–1–.02(2)(tt)	VOC Emissions from Major Sources	1/9/05	2/9/09 [Insert citation of publication]	
*	*	*	*	*
391–3–1–.02(2)(yy)	Emissions of Nitrogen Oxides from Major Sources.	1/9/05	2/9/09 [Insert citation of publication]	
*	*	*	*	*
391–3–1–.02(2)(rrr)	NO_X Emissions from Small Fuel-Burning Equipment.	3/27/06	2/9/09 [Insert citation of publication]	
*	*	*	*	*
391–3–1–.02(4)	Ambient Air Standards	1/9/05	2/9/09 [Insert citation of publication]	
391–3–1–.02(5)	Open Burning	7/13/06	2/9/09 [Insert citation of publication]	
*	*	*	*	*
391–3–1–.03	Permits	7/13/06	2/9/09 [Insert citation of publication]	
*	*	*	*	*
391–3–1–.05	Repealed	7/13/06	2/9/09 [Insert citation of publication]	
*	*	*	*	*

* * * * *

[FR Doc. 2010–2706 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0601; FRL–8812–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document moves the effective date of the revocation of six inert ingredient tolerance exemptions as set forth in the **Federal Register** on October 9, 2009 (74 FR 52148).

DATES: In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), August 7, 2009 (74 FR 39543), and October 9, 2009 (74 FR 52148):

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

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

Objections and requests for hearings must be received on or before April 12, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0601 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before April 12, 2010.

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

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

II. Background and Statutory Findings

A. Background

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

exemptions identified in the final rule under 40 CFR 180.910, 180.920, 180.930, and 180.940, with the revocations effective on August 9, 2008.

In a direct final rule published in the **Federal Register** on August 4, 2008 (73 FR 45312)(FRL–8372–7), EPA moved the effective date of the revocation of certain inert ingredient tolerance exemptions from August 9, 2008, until August 9, 2009. This determination was made based on requests for an extension of the revocation date from pesticide registrants and inert ingredient manufacturers who had demonstrated their intent to support certain inert ingredient tolerance exemptions and who had provided data development plans and schedules for data submission to the Agency. In a subsequent direct final rule published in the **Federal Register** on August 7, 2009 (74 FR 39543)(FRL–8431–8), EPA moved the effective date of the revocation of six inert ingredient tolerance exemptions from August 9, 2009, until October 9, 2009. This action was based on the fact that EPA had received petitions for the establishment of tolerance exemptions which included the submission of data for these inert ingredients. Notices of filing of these petitions (PP 8E7466 and PP 8E7478) were published in the **Federal Register** on March 25, 2009 (74 FR 12856)(FRL–8399–4). The August 7, 2009, direct final rule was published to allow for the completion of the Agency's risk assessments needed to evaluate the petitions and to complete the safety determinations for the six tolerance exemptions. The October 9, 2009 (74 FR 52148)(FRL–8794–1), direct final rule was published to move the effective date of the revocation of six inert ingredient tolerance exemptions from October 9, 2009 to February 9, 2010 to allow for the review and evaluation of significant additional toxicity, metabolism and environmental fate data submitted by the petitioners in further support of pesticide tolerance petitions 8E7466 and 8E7478.

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

Following the publication of the October 9, 2009, final rule delaying the effective date for the six revoked tolerance exemptions, EPA did its own search of the public literature and found new information that the Agency determined would have significant bearing on its safety evaluation under FFDCA section 408(c)(2) of the petitions (8E7466 and 8E7478) which are proposing that these exemptions be reestablished. EPA, therefore, concludes that additional time is necessary to complete the safety determinations for these six tolerance exemptions in order to allow time to review and evaluate this new information and that the effective date of the revocation of these tolerance exemptions should be moved by three months to May 9, 2010.

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

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

III. Delayed Effective Date for Certain Tolerance Exemptions

The amendatory designations listed in this unit are reprinted from the final rule published in the **Federal Register** issue of October 9, 2009 (74 FR 52148) for the convenience of the user. The structure mirrors the amendatory designations in the original document. The amendatory designations shown are those with the effective date delayed until May 9, 2010.

Section 180.910

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

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

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

Section 180.930

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

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

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

IV. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from*

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

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

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

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

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 2, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§180.910 [AMENDED]

■ 2. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), August 7, 2009 (74 FR 39543) and October 9, 2009 (74 FR 52148) the effective date is delayed from February 9, 2010, to May 9, 2010, for the following amendments to §180.910: 2.m., n., and cc.

§180.930 [AMENDED]

■ 3. In the final rule published August 9, 2006 (71 FR 45415), and delayed on August 4, 2008 (73 FR 45312), August 7, 2009 (74 FR 39543) and October 9, 2009 (74 FR 52148) the effective date is delayed from February 9, 2010, to May 9, 2010, for the following amendments to §180.930: 4.t., u., and v.

[FR Doc. 2010–2801 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[WT Docket No. 08–166, 08–167; ET Docket No. 10–24; FCC 10–16]

Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, Including Wireless Microphones, and the Digital Television Transition

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: On January 15, 2010, the Commission released a Report and Order in the matter of "Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698–806 MHz Band; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary Stations, including Wireless Microphones, and the Digital Television Transition." This document contains corrections to the final regulations that appeared in the **Federal Register** of January 22, 2010 (75 FR 3622).

DATES: February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari, Wireless Telecommunications Bureau, (202) 418–1550, e-mail *Paul.Dari@fcc.gov,* or Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Communications Commission published a document amending part 2 in the **Federal Register** of January 22, 2010 (75 FR 3622). The Commission makes the following correction to § 2.106 of the rules.

Need for Correction

As published, the final regulations contain an error, which requires immediate correction.

List of Subjects in 47 CFR Part 2

Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ Accordingly, 47 CFR part 2 is corrected by making the following correcting amendments:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, Table of Frequency Allocations, is amended by revising page 27 and footnote NG 159 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
(See previous page)	(See previous page)	(See previous page)	698-890	698-763 FIXED MOBILE BROADCASTING NG128 NG142 NG159	Wireless Communications (27) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G)
				763-775 FIXED MOBILE NG128 NG142 NG158 NG159	LPTV, TV Translator/Booster (74G) Private Land Mobile (90R)
				775-793 FIXED MOBILE BROADCASTING NG128 NG142 NG159	Wireless Communications (27) Broadcast Radio (TV)(73) LPTV, TV Translator/Booster (74G)
790-862 FIXED BROADCASTING				793-805 FIXED MOBILE NG128 NG142 NG158 NG159	LPTV, TV Translator/Booster (74G) Private Land Mobile (90R)
				805-806 FIXED MOBILE BROADCASTING NG128 NG142 NG159	Wireless Communications (27) LPTV, TV Translator/Booster (74G)
	806-890 FIXED MOBILE 5.317A BROADCASTING			806-809 LAND MOBILE	Private Land Mobile (90)
				809-849 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
				849-851 AERONAUTICAL MOBILE	Public Mobile (22)
				851-854 LAND MOBILE	Private Land Mobile (90)
5.312 5.314 5.315 5.316 5.319				854-894 FIXED LAND MOBILE	Public Mobile (22) Private Land Mobile (90)
862-890 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322					
5.319 5.323	5.317 5.318			US116 US268	

NON–FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NG 159 In the band 698–806 MHz, stations authorized under 47 CFR part 74, subparts E, F, and G may continue to operate indefinitely on a secondary basis to all other stations operating in that band.

* * * * *

[FR Doc. 2010–2779 Filed 2–8–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XU24

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, February 7, 2010, through June 30, 2010, unless changed by further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *susan.gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the Gulf of Mexico eastern zone into northern and southern subzones, and established their separate quotas. The quota for the hook-and-line fishery in the southern Florida west coast subzone is 520,312 lb (236,010 kg)(50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(2), from the date that 75 percent of the southern Florida west coast subzone's hook-and-line gear quota has been harvested until a closure of the subzone's hook-and-line fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line gear quota for Gulf group king mackerel from the southern Florida west coast subzone has been reached. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the southern Florida west coast subzone effective 12:01 a.m., local time, February 7, 2010. The 500–lb (227–kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2010), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone located south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL boundary) along the west coast of Florida to 87°31′06′ W. long. (a line directly south from the Alabama/Florida boundary). The Florida west coast subzone is further divided into northern and southern subzones. From November 1 through March 31, the southern subzone is designated as the area extending south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, Florida, boundary), i.e., the area off Collier and Monroe Counties. Beginning April 1, the southern subzone is reduced to the area off Collier County, Florida, between 25°48′ N. lat. and 26°19.8′ N. lat.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this trip limit reduction for the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: February 3, 2010.

Alan D. Risenhoover,

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

[FR Doc. 2010–2806 Filed 2–4–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 26
Tuesday, February 9, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0015; Airspace Docket No. 09–ASW–18]

RIN 2120–AA66

Proposed Amendment of Low Altitude Area Navigation Route T–254; Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify low altitude Area Navigation (RNAV) route T–254 in the Houston, TX, terminal area by eliminating the segment between the Centex, TX, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the College Station, TX, VORTAC. This action would eliminate a portion of T–254 that is no longer needed; thus, enhance safety and the efficient use of the navigable airspace in the Houston, TX, terminal area.

DATES: Comments must be received on or before March 26, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2010–0015 and Airspace Docket No. 09–ASW–18 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0015 and Airspace Docket No. 09–ASW–18) and be submitted in triplicate to the Docket Management Facility (*see* "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0015 and Airspace Docket No. 09–ASW–18." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* "**ADDRESSES**" section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd. Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend the low altitude RNAV route T–254 in the Houston, TX, terminal area by eliminating the route segment between the Centex, TX, VORTAC and College Station, TX, VORTAC. When established, the original purpose of T–254 was to provide a navigable route for en route Instrument Flight Rules (IFR) operations navigating around the Houston Class B terminal airspace area where no existing structure existed. However, the T–254 route segment noted above was inadvertently established overlaying a portion of the existing VHF Omnidirectional Range (VOR) airway V–565. This action would eliminate the unnecessary duplication of an existing National Airspace System route to enhance safety and facilitate the efficient use of the navigable airspace for en route IFR operations transitioning around the Houston Class B terminal airspace area.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV route listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify a low altitude RNAV T-route in the Houston, TX, terminal area.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–254 College Station, TX to Lake Charles, LA [Amended]

College Station, TX (CLL)	VORTAC	(lat. 30°36′18″N., long. 96°25′14″W.)
EAKES, TX	WP	(lat. 30°33′18″N., long. 95°18′29″W.)
CREPO, TX	WP	(lat. 30°16′54″N., long. 94°14′43″W.)
Lake Charles, LA (LCH)	VORTAC	(lat. 30°08′29″N., long. 93°06′20″W.)

Issued in Washington, DC, on February 2, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–2708 Filed 2–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0007; Airspace Docket No. 09–AAL–20]

RIN 2120–AA66

Proposed Amendment of Jet Route J–120; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Jet Route J–120 in Alaska. The FAA is proposing this action in preparation of the eventual decommissioning of the Barter Island (BTI) Non-directional Beacon (NDB) at the village of Kaktovik, Alaska, ensuring the safe and efficient use of airspace within the National Airspace System.

DATES: Comments must be received on or before March 26, 2010.

ADDRESSES: Send comments on the proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001, telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2010–0007 and Airspace Docket No. 09–AAL–20 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0007 and Airspace Docket No. 09–AAL–20) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0007 and Airspace Docket No. 09–AAL–20." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the

Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaskan Service Center, Operations Support Group, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to the Title 14 Code of Federal Regulations (14 CFR) part 71 to revise Jet Route J–120 by removing the segment from Fort Yukon to the BTI NDB. The BTI NDB decommissioning proposal was publicly circulated in Notice number 06–AAL–49NR. After reviewing public comment, the FAA decided that keeping the NDB was not feasible and that it should be decommissioned.

Jet Routes are published in paragraph 2004 of FAA Order 7400.9T, dated August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Jet Route listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify a Jet Route in Alaska.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes

* * * * *

J–120 [Amended]

From Mt. Moffett, AK, NDB, via St. Paul Island, AK, NDB; Bethel, AK; McGrath, AK; Fairbanks, AK; to Fort Yukon, AK.

Issued in Washington, DC on February 2, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–2709 Filed 2–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 6887]

RIN 1400–AC58

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State.

ACTION: Proposed rule.

SUMMARY: This rule proposes adjustments in current fees for consular services. The Department of State is adjusting the fees in light of an independent cost of service study's ("CoSS") findings that the U.S. Government is not fully covering its costs for providing these services under the current fee structure. The primary objective of the adjustments to the Schedule of Fees is to ensure that fees for consular services reflect costs to the United States of providing the services.

DATES: Written comments must be received on or before 30 days from February 9, 2010.

ADDRESSES: Interested parties may submit comments by any of the following methods:

- Persons with access to the Internet may view this notice and submit comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD–ROM):* U.S. Department of State, Office of the Executive Director, Bureau of Consular Affairs, U.S. Department of State, Suite H1001, 2401 E Street NW., Washington, DC 20520.
- *E-mail: fees@state.gov.* You must include the RIN (1400–AC58) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Amber Baskette, Office of the Executive Director, Bureau of Consular Affairs, Department of State; phone: 202–663–2599, telefax: 202–663–2499; e-mail: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

The proposed rule makes changes to the Schedule of Fees for Consular Services of the Department of State's

Bureau of Consular Affairs ("Schedule of Fees" or "Schedule"), as well as a conforming amendment to 22 CFR 51.51(d). As discussed below, full cost recovery is the basis on which consular fees are ordinarily set and collected. In line with this principle, the Department has reviewed its current consular fees based on a recently completed CoSS, and decided to implement a number of changes to the Schedule of Fees.

Two of these changes are particularly noteworthy. First, the proposed rule establishes a tiered application processing fee for immigrant visas depending on the category, as determined by the cost to the U.S. Government of processing that particular category of visa. Second, the proposed rule increases the adult passport book application fee from $55 to $70 to make this fee more consistent with full cost recovery. Moreover, certain consular services performed for no fee are included in the Schedule so that members of the public will be aware of significant consular services provided by the Department for which they will not be charged.

Nonimmigrant visa fees, including fees for Machine-Readable Visas (MRVs) and Border Crossing Cards (BCCs), have been modified pursuant to a separate rule published December 14, 2009. These modified fees are reflected in Item 21 of the Schedule below.

What Is the Authority for This Action?

The Department of State derives the general authority to set the amount of fees for the consular services it provides, and to charge those fees, from the general user charges statute, 31 U.S.C. 9701. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency * * * based on * * * the costs to the Government * * *."). As implemented through Executive Order 10718 of June 27, 1957, 22 U.S.C. 4219 further authorizes the Department to establish fees to be charged for official services provided by U.S. embassies and consulates. Other authorities allow the Department to charge fees for consular services, but not to determine the amount of such fees, as the amount is statutorily determined. Examples include: (1) The $13 fee for machine-readable BCCs for certain Mexican citizen minors, Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, 112 Stat. 2681–50, Div. A, Title IV, sec. 410(a) (reproduced at 8 U.S.C. 1351 note); and (2) the reciprocal nonimmigrant visa issuance fee, 8 U.S.C. 1351.

A number of other statutes address specific fees relating to passport processing, immigrant and nonimmigrant visa processing, and overseas citizens services. For example, 22 U.S.C. 214 authorizes the Department to charge passport application and execution fees. Another law authorizes the Department to establish a fee for the processing of applications for "diversity visas," to recover the costs of the "visa lottery" program conducted under Immigration and Nationality Act (INA) sections 203 and 222, 8 U.S.C. 1153, 1201. *See* Omnibus Consolidated Appropriations Act, 1997, Public Law 104–208, 110 Stat. 3009, Div. C, Title VI, § 636 (reproduced at 8 U.S.C. 1153 note). Only those applicants who register in the lottery and are selected may apply for a visa, and those who choose to apply must pay the fee; the fee incorporates the costs to the Department of administering the lottery program. *Id.* Another statute authorizes the Department to collect and retain surcharges on passports and immigrant visas to help pay for efforts to enhance border security. *See* 8 U.S.C. 1714. While these fees were originally frozen statutorily at $12 and $45 respectively, subsequent legislation authorized the Department to amend these amounts administratively, provided the resulting surcharge is "reasonably related to the costs of providing services in connection with the activity or item for which the surcharges are charged." Department of State Authorities Act of 2006, Public Law 109–472, 120 Stat. 3554, sec. 6(b)(1) (reproduced at 8 U.S.C. 1714 note). Furthermore, several statutes deal with fees for nonimmigrant visas, including the issuance fee statute described above, 8 U.S.C. 1351 (establishing reciprocity as the basis for the nonimmigrant visa issuance fee), and the MRV and BCC fees modified in the proposed rule published in the **Federal Register** on December 14, 2009.

Certain persons are exempted by law or regulation from paying specific fees or are expressly made subject to a special fee regime by law. These are noted in the Schedule of Fees below. They include, for instance, several exemptions from the nonimmigrant visa application fee for certain individuals who engage in charitable activities or who qualify for diplomatic visas. *See* 8 U.S.C. 1351; 22 CFR 41.107(c). Certain Iraqi and Afghan nationals are similarly exempt from paying an immigrant visa application fee. *See* National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, 122 Stat. 3, Div. A, Title XII, sec. 1244(d) (reproduced at 11 U.S.C. 1157 note); Omnibus Appropriations Act, 2009, Public Law 111–8, 123 Stat. 524, Div. F, Title VI, sec. 602(b)(4) (reproduced at 8 U.S.C. 1101 note). As another example, qualifying Mexican citizen minors pay a special BCC fee well below what it costs the Department to process such cards. Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 105–277, Div. A, Title IV, sec. 410(a), *reproduced at* 8 U.S.C. 1351 note.

While for most consular fees, the funds collected must be deposited into the Treasury, various statutes permit the Department to retain the fees it collects. Among these are the following: (1) The MRV and BCC fees, Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Public Law 103–236, Title I, sec. 140(a)(2), 112 Stat. 2681–50 (reproduced at 8 U.S.C. 1351 note); (2) the passport expedite fee, Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Public Law 103–317, 108 Stat. 1724, Title V (reproduced at 22 U.S.C. 214 note); (3) the passport and immigrant visa security surcharges, 8 U.S.C. 1714; (4) the Western Hemisphere Travel Initiative (WHTI) surcharge, which is imbedded in the passport book and passport card application fees, 22 U.S.C. 214(b)(1); (5) the diversity visa lottery fee Omnibus Consolidated Appropriations Act, 1997, Public Law 104–208, Div. C, Title VI, sec. 636 (reproduced at 8 U.S.C. 1153 note); (6) the fee for an affidavit of support, Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, Div. A, Title II, § 232(a) (reproduced at 8 U.S.C. 1183a note); and (7) the fee to process requests from participants in the Department's Exchange Visitor Program for a waiver of the two-year home-residence requirement, 22 U.S.C. 1475e. The Department also has available to it a portion of certain fraud prevention and detection fees charged to applicants for H- and L-category visas. 8 U.S.C. 1356(v)(2)(A).

Why Is the Department Adjusting Fees at This Time?

With certain exceptions—such as the reciprocal nonimmigrant visa issuance fee and the reduced Mexican citizen minor BCC fee described above, as well as a congressionally mandated $1 surcharge on all nonimmigrant visas, *see* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457, 122 Stat. 5044, Title II, sec. 239 (reproduced at 8 U.S.C. 1351 note)—the Department of

State generally sets consular fees at an amount calculated to achieve recovery of the costs to the U.S. Government of providing the consular service, in a manner consistent with general user charges principles, regardless of the specific statutory authority under which the fees are authorized. As set forth in OMB Circular A–25, as a general policy, each recipient should pay a reasonable user charge for government services, resources, or goods from which he or she derives a special benefit, at an amount sufficient for the U.S. Government to recover the full costs to it of providing the service, resource, or good. *See* OMB Circular No. A–25, sec. 6(a)(2)(a). The OMB guidance covers all Federal Executive Branch activities that convey special benefits to recipients beyond those that accrue to the general public. *See id.,* sections 4(a), 6(a)(1).

While fees are thus set in accordance with full cost recovery, there are limited circumstances, such as the passport book and card application fees for minors, in which costs are allocated to related fees or the Department charges a fee that is lower than the cost of providing the service. This may be done in order to account for statutory requirements or the potential impact on the public of setting those fees at a higher level.

The Department reviews consular fees periodically to determine each fee's appropriateness in light of the OMB guidance. The Department has made the changes set forth in this proposed Schedule of Fees accordingly. In line with this guidance, the Department contracted for an independent CoSS, which conducted its work from August 2007 through June 2009. The CoSS used an activity-based costing model to determine the current direct and indirect costs to the U.S. Government associated with each consular good and service the Department provides. The contractor and Department staff surveyed and visited domestic and overseas consular sites handling a representative sample of all consular services worldwide. The study identified the cost of the various discrete consular goods and services, both direct and indirect, and the study's results formed the basis of the changes herein proposed to the Schedule. Detailed information concerning the CoSS's methodology is available from the Bureau of Consular Affairs.

In situations where services are provided with enough frequency to develop a reliable estimate of the average time involved, the Schedule generally sets a flat service fee. In situations that require services to be performed away from the office or during after-duty hours, the Department calculates the fee based on a consular "hourly rate"; this rate, which appears at Item 75 on the Schedule below, represents the cost per hour or part thereof/per consular employee. Whether by flat fee or fee determined by hourly rate, the fees the Department charges are designed to recover—at most—the full costs the Department expects the U.S. Government to incur over the period the Schedule will be in effect. The Department based all fees in the Schedule on projected Fiscal Year 2010 workloads.

As a result of the CoSS's findings and the Department's analysis of these findings, the Department is hereby proposing adjustments to the Schedule of Fees. As noted above, adjustments to nonimmigrant visa fees, including those for BCCs, have been promulgated under a separate rule published December 14, 2009.

The last broad set of amendments to the Schedule occurred in 2005, though the Department has made piecemeal amendments to it since that time. Some fees, including items 31(a) and (b) and 35(d), are set by the Department of Homeland Security and were most recently updated by that agency on July 30, 2007. Changes to the current Schedule of Fees are discussed below. All CoSS estimates discussed below are based on projected workload for Fiscal Year 2010, and fees have been rounded to make them easier to collect, especially when converting from foreign currencies, which are most often used when paying for fees at posts abroad. This proposed rule also makes a conforming amendment to 22 CFR 51.51(d), which establishes the surcharge on the filing of each passport application in order to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, 118 Stat. 3638 (reproduced at 8 U.S.C. 1185 note).

Passport Book Application Services

The Department is increasing the application fee for a passport book for an adult (age 17 and older) from $55 to $70. The application fee for a passport book for a minor (age 16 and younger) will remain at $40. The CoSS estimated that the cost of processing first-time passport applications for both adults and minors is $105.80 based on a projected FY10 workload of 11.9 million. This cost includes border security costs covered by the passport book security surcharge, discussed immediately below. Because a minor passport book has a validity of just five years, in contrast with the ten-year validity period of an adult passport book, the Department has decided to leave the minor passport book application fee at $40, and allocate the remainder of the cost of processing minor passport book applications to the adult passport application fee.

As described in 22 CFR 51.51(d), this fee incorporates the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 (reproduced at 8 U.S.C. 1185 note). This portion of the application fee, which is embedded within the fee and not charged separately or separately itemized in the Schedule of Fees, has increased from $20 to $22 per application based on increased costs related to new passport agencies serving border communities.

Passport Book Security Surcharge

The Department is increasing the passport book security surcharge from $20 to $40 in order to cover the costs of increased border security which includes, but is not limited to, enhanced biometric features in the document itself. The passport book security surcharge is the same for adult passport books and for minor passport books.

Additional Passport Visa Pages

In the past, the Department provided extra pages in a customer's passport, to which foreign countries' visas may then be affixed, at no charge. The CoSS found that the cost of the pages themselves, of having the pages placed in the book in a secure manner by trained personnel, and of completing the required security checks results in a cost to the U.S. Government of $82.48 based on a projected FY10 workload of 218,000. Therefore, the Department will charge $82 for this service.

Passport Card Application Services

The CoSS projected that the cost of processing first-time applications for adult and minor passport cards will be $77.59 based on an FY 2010 workload projection of 1.56 million cards. Adjudication costs associated with a passport card are the same as those associated with a passport book. Nevertheless, the card is intended to be a substantially less expensive document than the passport book, for the convenience of citizens who live close to land borders and cross back and forth frequently. Therefore, the Department has decided to raise the adult passport card application fee from $20 to just

$30, and the minor passport card application fee from $10 to just $15.

As described in 22 CFR 51.51(d), this application fee incorporates the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 (reproduced at 8 U.S.C. 1185 note). This portion of the fee, which is embedded within the fee and not charged separately or separately itemized in the Schedule of Fees, has increased from $20 to $22 for the adult passport card and from $10 to $15 for the minor passport card, and is based on increased costs related to new passport agencies serving border communities.

File Search and Verification of U.S. Citizenship

When an applicant for a passport book or passport card does not present evidence of citizenship, the Department must search its files to attempt to discern his or her U.S. citizenship. The Department is raising the fee for this service from $60 to $150 based on the cost of providing the service, and notes that applicants can avoid paying this fee by providing adequate citizenship documentation when applying for a passport rather than to request a costly, time-intensive Department file search.

Application for Consular Report of Birth Abroad of a Citizen of the United States

The CoSS found that the cost of accepting and processing an application for a Consular Report of Birth Abroad of a Citizen of the United States is $197.28 based on an FY10 workload projection of 80,000 applications. The Department has decided to raise the fee from $65 to $100, still significantly less than cost, based on its view that too high a fee might deter U.S. citizen parents from properly documenting the citizenship of their children at birth, a development the Department feels would be detrimental to national interests.

Documentation for Renunciation of Citizenship

The CoSS demonstrated that documenting a U.S. citizen's renunciation of citizenship is extremely costly, requiring American consular officers overseas to spend substantial amounts of time to accept, process, and adjudicate cases. A new fee of $450 will be established to help defray a small portion of the total cost to the U.S. Government of documenting the renunciation of citizenship.

Death and Estate Services

The CoSS found that the average cost of assisting U.S. citizens in making arrangements for a deceased non-U.S. citizen family member abroad is $388.19 based on an FY 2010 workload projection of 50,000 cases. The Department had previously charged a fee of $265 per hour, the then-applicable fee for consular time (discussed below), plus expenses. The Department has decided to set the new fee for death and estate services at significantly lower than costs—$200 plus expenses—in order to assist bereaved families.

Immigrant Visa Application Processing Fee

The Department is changing the fee for processing an immigrant visa from $355 for all immigrant visas, to a four-tiered fee based on CoSS estimates for each discrete category of immigrant visa, as applications for certain applications cost more to process than others. Accordingly, the application fee for a family-based (immediate relative and preference) visa (processed on the basis of an I–130, I–600 or I–800 petition) will be $330.

The application fee for an employment-based visa (processed on the basis of an I–140 petition) will be $720. Other immigrant visa applications (including for diversity visa applicants, I–360 self-petitioners, special immigrant visa applicants and all others) will have a fee of $305. As noted above, certain qualifying Iraqi and Afghan special immigrant visa applicants are statutorily exempt from paying a processing fee. National Defense Authorization Act for Fiscal Year 2008, Public Law 110–181, Div. A, Title XII, § 1244(d) (reproduced at 11 U.S.C. 1157 note); Omnibus Appropriations Act, 2009, Public Law 111–8, Div. F, Title VI, sec. 602(b)(4) (reproduced at 8 U.S.C. 1101 note).

Immigrant Visa Security Surcharge

The Department is increasing the immigrant visa security surcharge, which all applicants except those statutorily exempted must pay, from $45 to $74 to cover increased security costs as determined by the CoSS, including the costs of the enhanced security screening requirements associated with fingerprint collection which were previously included in the immigrant visa application processing fee.

Diversity Visa Lottery Fee for Immigrant Visa Application

The Department is raising the fee paid by winners of the Diversity Visa lottery who apply for immigrant visas from $375 to $440 based on CoSS estimates for an FY 2010 workload projection of 81,000 applications. The Department has authority to collect the surcharge only from persons who are selected through the lottery process and therefore qualify to apply for a Diversity Visa, and to set it at a level sufficient to cover the entire cost of running the lottery. Omnibus Consolidated Appropriations Act, 1997, Public Law 104–208, Div. C, Title VI, § 636 (reproduced at 8 U.S.C. 1153 note).

Affidavit of Support Review

The Department charges the affidavit of support review fee for all affidavits of support reviewed at the National Visa Center in connection with an application for an immigrant visa. The purpose of the review is to ensure that each affidavit is properly completed before the National Visa Center forwards it to a consular post for adjudication. The Department is increasing the fee from $70 to $88 to reflect the increase in the cost of providing this service to immigrant visa applicants.

Determining Returning Resident Status

The CoSS found that determining the status of persons who claim to be legal permanent residents of the United States but do not have documentation to prove this fact, has become less costly than before due to advances in automation, making it easier to verify U.S. immigration status. As such, the Department will lower the fee from $400 to $380.

Providing Documentary Services

The CoSS found the cost to the U.S. Government of providing documentary services overseas is $76.36 per service based on a projected FY 2010 workload of 380,000 services. These are primarily notarial services, certification of true copies, provision of documents, and authentications. However, the Department is raising these fees only from $30 to $50, lower than cost, in order to minimize the impact on the public.

Processing Letters Rogatory and Foreign Sovereign Immunities Act Judicial Assistance Cases

The CoSS found that the cost to the U.S. Government of processing letters rogatory and Foreign Sovereign Immunities Act judicial assistance cases is $2,274.59 based on a projected FY 2010 workload of 1400 services. The Department will accordingly raise the fee for these services to $2,275.

Taking Depositions or Executing Commissions To Take Testimony

Several services fall under this heading, and fees for three of the

services will be raised as a result of the CoSS's estimates of costs to the U.S. Government. The new fees appear in the Schedule below.

Consular Time Charges

The Department previously charged a consular time fee of $265 per hour, per employee. The CoSS estimated that consular time charges for services performed away from the office or outside business hours only costs $231 per hour, per employee. Therefore, the Department will lower this fee to $231 per hour.

When Will the Department of State Implement This Proposed Rule?

The Department intends to implement this proposed rule, and initiate collection of the fees set forth herein, as soon as practicable following the expiration of the 30-day public comment period following this proposed rule's publication in the **Federal Register,** and after the Department has had the opportunity to fully consider any public comments received.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with a 30-day provision for public comments.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). This rule raises the application and processing fee for passports, immigrant visas and American citizen services. The Department of State estimates that the agency will process 16,000 total employment-based immigrant visa applications, all of which fall into the E–1, E–2, E–3, E–4, and E–5 categories. (**Note:** The Department of Homeland Security processes domestic adjustment of status for approximately 90 percent of all employment-based immigrants; cases processed domestically do not pay Department of State fees.) The issuance of some "E" category employment-based immigrant visas may be contingent upon approval by DHS of a petition filed by a United States company, and these companies pay a fee to DHS to cover the processing of the petition. The amount of the petition fees that are paid by small entities to DHS is not controlled by the amount of the visa fees paid by individuals to the Department of State. The visa itself is sought and the application processing fees are paid for by an individual foreign national overseas who seeks to immigrate to the United States. The Department of State does not track applications for employment-based visas by the size and nature of the petitioning businesses, and therefore cannot identify the share of this impact on the small businesses versus large businesses. While some employers may choose to reimburse application costs, small businesses are not required by law to reimburse the individuals, and therefore no small businesses will be impacted. Additionally, small entities may pay judicial services fees if required for legal matters with foreign companies, but in very limited circumstances and small numbers. For instance, worldwide in FY 2009, embassies and consulates arranged only 123 depositions and processed only 156 letters rogatory.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, since it will result in an annual effect on the economy of $100 million or more. *See* 5 U.S.C.804(2).

Executive Order 12866

OMB considers this rule to be an economically significant regulatory action under Executive Order 12866, section 3(f)(1), Regulatory Planning and Review, Sept. 30, 1993 because it is likely to have an annual effect on the economy of $100 million or more. 58 FR 51735. This rule is necessary in light of the Department of State's CoSS finding that the cost of processing passports and immigrant visas and of providing other consular services has generally increased since the fees were last set. The Department is setting the fees in accordance with 31 U.S.C. 9701 and other applicable authority, as described in more detail above. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency … may prescribe regulations establishing the charge for a service or thing of value provided by the agency … based on … the costs to the Government."). This regulation generally sets the fees for passports, immigrant visas and consular services at the amount required to recover the costs associated with providing this service.

Accordingly, this rule has been submitted to OMB for review.

Details of the proposed fee changes are as follows:

Item	Proposed fee	Current fee	Change in fee	Percent increase	FY09 workload	Consequent total increase in fee sassuming FY09 work-loads
2(a). Passport Book Application Services for Applicants age 16 or over (including renewals).	$70	$55	$15	27%	9,207,088	$138,106,320
2(c). Additional passport visa pages.	$82	$0	$82	undefined	207,810	$17,040,420
2(g). Passport Book Security Surcharge.	$40	$20	$20	100%	11,935,556	$238,711,120

Item	Proposed fee	Current fee	Change in fee	Percent increase	FY09 workload	Consequent total increase in fee sassuming FY09 workloads
6. File search and verification of U.S. citizenship.	$150	$60	$90	150%	11,192	$1,007,280
7. Application for Consular Report of Birth Abroad of a Citizen of the United States.	$100	$65	$35	54%	58,198	$2,036,930
8. Documentation of formal renunciation of U.S. citizenship.	$450	$0	$450	undefined	1,188	$534,600
9(a). Passport Card Application Services for Applicants age 16 or over (including renewals).	$30	$20	$10	50%	1,196,078	$11,960,780
9(b). Passport Card Application Services for Applicants under age 16.	$15	$10	$5	50%	354,451	$1,772,255
14(b). Making arrangements for a deceased non-U.S. citizen family member.	$200 plus expenses.	Consular time (Item 75) plus expenses.	-$65 per hour	-25% per hour	426	($27,690)
32(a). Immigrant visa application processing for immediate relative and family preference applications.	$330	$355	($25)	-7%	478,116	($11,952,900)
32(b). Immigrant visa application processing for employment-based applications.	$720	$355	$365	103%	16,395	$5,984,175
32(c). Immigrant visa application processing for other visa classes.	$305	$355	($50)	-14%	5,121	($256,050)
33. Diversity Visa Lottery fee	$440	$375	$65	17%	55,368	$3,598,920
34. Affidavit of Support Review	$88	$70	$18	26%	311,038	$5,598,684
35(a). Determining Returning Resident Status.	$380	$400	($20)	-5%	1,611	($32,220)
36. Immigrant visa security surcharge.	$74	$45	$29	64%	575,554	$16,691,066
41(a). Providing notarial service: First service.	$50	$30	$20	67%	128,818	$2,576,360
41(b). Providing notarial service: Each additional seal.	$50	$20	$30	150%	60,782	$1,823,460
42(a). Certification of a true copy or that no record of an official file can be located: First copy.	$50	$30	$20	67%	15,611	$312,220
42(b). Certification of a true copy or that no record of an official file can be located: Each additional copy.	$50	$20	$30	150%	3,099	$92,970
43(a-f). Provision of documents, certified copies of documents, and other certifications by the Department of State (domestic).	$50	$30	$20	67%	29,425	$588,500
44. Authentications (44a-d)	$50	$30	$20	67%	18,863	$377,260
51. Processing letters rogatory and Foreign Sovereign Immunities Act (FSIA) judicial assistance cases.	$2,275	$735	$1,540	210%	156	$240,240
52(a). Scheduling/arranging appointments for depositions.	$1,283	$475	$808	170%	123	$99,384
52(b). Attending or taking depositions, or executing commissions to take testimony.	$309 per hour plus expenses.	$265 per hour plus expenses.	$44 per hour	17%	38	$1,672
52(e). Providing seal and certification of depositions.	$415	$70	$345	493%	16	$5,520
75. Consular time charges	$231	$265	($34)	-13%	70	($2,380)

The Department of State does not anticipate that demand for passport, immigrant visa, and other services affected by this rule will change significantly due to these fee changes, and welcomes public comment on that expectation.

With regard to immigrant visas, many categories are numerically capped; these caps artificially limit workload and keep current demand fairly stable. In FY 2009, the Department issued all available immigrant visas in employment-based categories (capped at 140,000 including adjustments of status processed domestically by the

Department of Homeland Security). In FY 2009, the Department issued 96 percent of the immigrant visas available under the Diversity Visa program (capped at 50,000 including adjustments of status processed domestically by the Department of Homeland Security). Also in FY 2009, the Department issued 96 percent of the immigrant visas available for family-preference categories (capped at 226,000 including adjustments of status processed domestically by the Department of Homeland Security). When fewer visas were issued than were available under the numerical cap, it was generally due to administrative processing issues rather than lack of demand. There are nearly 3.5 million applicants currently awaiting numerically controlled visas, sufficient to fill more than eight years' workload at the current annual caps. It is reasonable to expect that the immigrant visa workload for FY 2010 and FY 2011 will remain about the same as FY 2009. Please note that these estimates do not take into account variables that the Department cannot predict at this time, such as legislative changes.

With regard to passports, the Department does not believe that passport application fees are a significant determining factor when Americans decide to travel internationally. The price of a passport book or card remains minor in comparison with other costs associated with foreign travel, given that taxes and surcharges alone on an international airfare can easily surpass $100. As a result, the Department does not believe passport demand will be significantly affected by increases of the size proposed. In addition, the Western Hemisphere Travel Initiative has now been fully implemented, and there is no new regulatory impetus for passport demand on the horizon.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, Federalism, Aug. 4, 1999, the Department has determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. 64 FR 43255.

Paperwork Reduction Act

This rule does not impose or alter any reporting or record-keeping requirements.

List of Subjects in 22 CFR Parts 22 and 51

Consular services, fees, passports and visas.

Accordingly, for the reasons stated in the preamble, 22 CFR Part 22 and Part 51 are proposed to be amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

1. The authority citation for part 22 is amended to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1183a note, 1351, 1351 note, 1714, 1714 note; 10 U.S.C. 2602(c); 11 U.S.C. 1157 note; 22 U.S.C. 214, 214 note, 1475e, 2504(a), 4201, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10,718, 22 FR 4632; Exec. Order 11,295, 31 FR 10603.

2. Revise § 22.1 to read as follows:

§ 22.1 Schedule of fees.

The following table sets forth the U.S. Department of State's Schedule of Fees for Consular Services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
PASSPORT AND CITIZENSHIP SERVICES	
1. Passport Book or Card Execution: Required for first-time applicants and others who must apply in person (Applicants applying for both the book and card simultaneously on the same application pay only one execution fee.).	$25.
2. Passport Book Application Services for:	
(a) Applicants age 16 or over (including renewals)	$70.
(b) Applicants under age 16	$40.
(c) Additional passport visa pages	$82.
(d) Passport book replacement for name change if submitted within one year of passport issuance	NO FEE.
(e) Passport book replacement for passport book limited in validity if submitted within one year of passport issuance. (Passport books limited in validity because of multiple losses, thefts, damage, or mutilations cannot be replaced.).	NO FEE.
(f) Passport book replacement for data correction (name, date of birth, place of birth, sex printed erroneously) if submitted within one year of passport issuance.	NO FEE.
(g) Passport Book Security Surcharge (Enhanced Border Security Fee)	$40.
3. Expedited service: Passport processing within the expedited processing period published on the Department's Web site (*see* 22 CFR 51.56(b)) and/or in-person service at a U.S. Passport Agency (not applicable abroad).	$60.
4. Exemptions: The following applicants are exempted from all passport fees listed in Item 2 above:	
(a) Officers or employees of the United States and their immediate family members (22 U.S.C. 214) and Peace Corps Volunteers and Leaders (22 U.S.C. 2504(h)) proceeding abroad or returning to the United States in the discharge of their official duties.	NO FEE.
(b) U.S. citizen seamen who require a passport in connection with their duties aboard an American flag vessel (22 U.S.C. 214(a)).	NO FEE.
(c) Widows, children, parents, or siblings of deceased members of the Armed Forces proceeding abroad to visit the graves of such members (22 U.S.C. 214(a)).	NO FEE.
(d) Employees of the American National Red Cross proceeding abroad as members of the Armed Forces of the United States 10 U.S.C. 2602(c)).	NO FEE.
5. Travel Letter: Provided in rare, life-or-death situations as an emergency accommodation to a U.S. citizen returning to the United States when the consular officer is unable to issue a passport book.	NO FEE unless consular time charges (Item 75) apply.
6. File search and verification of U.S. citizenship: When applicant has not presented evidence of citizenship and previous records must be searched (except for an applicant abroad whose passport was stolen or lost abroad or when one of the exemptions is applicable).	$150.

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
7. Application for Consular Report of Birth Abroad of a Citizen of the United States	$100.
8. Documentation of formal renunciation of U.S. citizenship	$450.
9. Passport Card Application Services for:	
(a) Applicants age 16 or over (including renewals) [Adult Passport Card]	$30.
(b) Applicants under age 16 [Minor Passport Card]	$15.
(c) Passport card replacement for name change if submitted within one year of passport issuance	NO FEE.
(d) Passport card replacement for data correction (name, date of birth, place of birth, sex printed erroneously) if submitted within one year of passport issuance.	NO FEE.
(Item 10 vacant.)	
OVERSEAS CITIZENS SERVICES ARRESTS, WELFARE AND WHEREABOUTS, AND RELATED SERVICES	
11. Arrest and prison visits	NO FEE.
12. Assistance regarding the welfare and whereabouts of a U.S. Citizen, including child custody inquiries and processing of repatriation and emergency dietary assistance loans.	NO FEE.
(Item 13 vacant.)	
DEATH AND ESTATE SERVICES	
14. Assistance to next-of-kin:	
(a) After the death of a U.S. citizen abroad (providing assistance in disposition of remains, making arrangements for shipping remains, issuing Consular Mortuary Certificate, and providing up to 20 original Consular Reports of Death).	NO FEE.
(b) Making arrangements for a deceased non-U.S. citizen family member (providing assistance in shipping or other disposition of remains of a non-U.S. Citizen).	$200 plus expenses.
15. Issuance of Consular Mortuary Certificate on behalf of a non-U.S. Citizen	$60.
16. Acting as a provisional conservator of estates of U.S. Citizens:	
(a) Taking possession of personal effects; making an inventory under an official seal (unless significant time and/or expenses incurred).	NO FEE.
(b) Overseeing the appraisal, sale, and final disposition of the estate, including disbursing funds, forwarding securities, etc. (unless significant time and/or expenses incurred).	NO FEE.
(c) For services listed in Item 16(a) or (b) when significant time and/or expenses are incurred	Consular time (Item 75) plus expenses.
(Items 17 through 20 vacant.)	
NONIMMIGRANT VISA SERVICES	
21. Nonimmigrant visa application and border crossing card processing fees (per person):	
(a) Non-petition-based nonimmigrant visa (except E category)	$140.
(b) H, L, O, P, Q and R category nonimmigrant visa	$150.
(c) E category nonimmigrant visa	$390.
(d) K category nonimmigrant visa	$350.
(e) Border crossing card - 10-year validity (age 15 and over)	$140.
(f) Border crossing card - 5-year validity (under age 15; for Mexican citizens if parent or guardian has or is applying for a border crossing card).	$14.
22. EXEMPTIONS from nonimmigrant visa application processing fee:	
(a) Applicants for A, G, C-3, NATO and diplomatic visas as defined in 22 CFR 41.26	NO FEE.
(b) Applicants for J visas participating in official U.S. Government-sponsored educational and cultural exchanges	NO FEE.
(c) Replacement Machine-Readable Visa when the original visa was not properly affixed or needs to be reissued through no fault of the applicant.	NO FEE.
(d) Applicants exempted by international agreement as determined by the Department, including members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly, and their immediate families.	NO FEE.
(e) Applicants traveling to provide charitable services as determined by the Department	NO FEE.
(f) U.S. Government employees traveling on official business	NO FEE.
(g) A parent, sibling, spouse, or child of a U.S. Government employee killed in the line of duty who is traveling to attend the employee's funeral and/or burial; or a parent, sibling, spouse, son, or daughter of a U.S. Government employee critically injured in the line of duty for visitation during emergency treatment and convalescence.	NO FEE.
23. Nonimmigrant visa issuance fee, including border-crossing cards (Reciprocity Fee)	RECIPROCAL.
24. EXEMPTIONS from nonimmigrant visa issuance fee:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member; members and staff of an observer mission to United Nations Headquarters recognized by the UN General Assembly; and applicants for diplomatic visas as defined under Item 22(a); and their immediate families.	NO FEE.
(b) An applicant transiting to and from the United Nations Headquarters	NO FEE.
(c) An applicant participating in a U.S. Government-sponsored program	NO FEE.
(d) An applicant traveling to provide charitable services as determined by the Department	NO FEE.
25. Fraud prevention and detection fee for visa applicant included in L blanket petition (principal applicant only)	$500.
(Items 26 through 30 vacant.)	
IMMIGRANT AND SPECIAL VISA SERVICES	
31. Filing immigrant visa petition (collected for USCIS and subject to change)	

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(a) Petition to classify status of alien relative for issuance of immigrant visa	$355.
(b) Petition to classify orphan as an immediate relative	$670.
32. Immigrant visa application processing fee (per person)	
(a) Immediate relative and family preference applications	$330.
(b) Employment-based applications	$720.
(c) Other immigrant visa applications (including Diversity Visa applicants, I-360 self-petitioners, special immigrant visa applicants).	$305.
(e) Certain Iraqi and Afghan special immigrant visa applications (per 8 U.S.C. 1101 note; 11 U.S.C. 1157 note)	NO FEE.
33. Diversity Visa Lottery fee (per person applying as a result of the lottery program)	$440.
34. Affidavit of Support Review (only when reviewed domestically)	$88.
35. Special visa services:	
(a) Determining Returning Resident Status	$380.
(b) Transportation letter for Legal Permanent Residents of the United States	$165.
(c) Waiver of two-year residency requirement	$215.
(d) Waiver of immigrant visa ineligibility (collected for USCIS and subject to change)	$545.
(e) Refugee or significant public benefit parole case processing	NO FEE.
36. Immigrant visa security surcharge	$74.
(Items 37 through 40 vacant.)	
DOCUMENTARY SERVICES	
41. Providing notarial service:	
(a) First service (seal)	$50.
(b) Each additional seal provided at the same time in connection with the same transaction	$50.
42. Certification of a true copy or that no record of an official file can be located (by a post abroad):	
(a) First Copy	$50.
(b) Each additional copy provided at the same time	$50.
43. Provision of documents, certified copies of documents, and other certifications by the Department of State (domestic):	
(a) Documents relating to births, marriages, and deaths of U.S. citizens abroad originally issued by a U.S. embassy or consulate.	$50.
(b) Issuance of Replacement Report of Birth Abroad	$50.
(c) Certified copies of documents relating to births and deaths within the former Canal Zone of Panama from records maintained by the Canal Zone Government from 1904 to September 30, 1979.	$50.
(d) Certifying a copy of a document or extract from an official passport record	$50.
(e) Certifying that no record of an official file can be located	$50.
(f) Each additional copy provided at same time	$50.
44. Authentications (by posts abroad):	
(a) Authenticating a foreign notary or other foreign official seal or signature	$50.
(b) Authenticating a U.S. Federal, State, or territorial seal	$50.
(c) Certifying to the official status of an officer of the U.S. Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the U.S. Government.	$50.
(d) Each authentication	$50.
45. Exemptions: Notarial, certification, and authentication fees (Items 41-44) or passport file search fees (Item 6) will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant costs would be incurred).	NO FEE.
(b) With respect to documents to be presented by claimants, beneficiaries, or their witnesses in connection with obtaining Federal, State, or municipal benefits.	NO FEE.
(c) For U.S. citizens outside the United States preparing ballots for any public election in the United States or any of its territories.	NO FEE.
(d) At the direct request of a foreign government or an international agency of which the United States is a member if the documents are for official noncommercial use.	NO FEE.
(e) At the direct request of a foreign government official when appropriate or as a reciprocal courtesy	NO FEE.
(f) At the request of direct-hire U.S. Government personnel, Peace Corps volunteers, or their dependents stationed or traveling officially in a foreign country.	NO FEE.
(g) With respect to documents whose production is ordered by a court of competent jurisdiction	NO FEE.
(h) With respect to affidavits of support for immigrant visa applications	NO FEE.
(i) With respect to endorsing U.S. Savings Bonds Certificates	NO FEE.
(Items 46 through 50 vacant.)	
JUDICIAL ASSISTANCE SERVICES	
51. Processing letters rogatory and Foreign Sovereign Immunities Act (FSIA) judicial assistance cases, including providing seal and certificate for return of letters rogatory executed by foreign officials.	$2,275.
52. Taking depositions or executing commissions to take testimony:	
(a) Scheduling/arranging appointments for depositions, including depositions by video teleconference (per daily appointment).	$1,283.
(b) Attending or taking depositions, or executing commissions to take testimony (per hour or part thereof)	$309 per hour plus expenses.
(c) Swearing in witnesses for telephone depositions	Consular time (Item 75) plus expenses.

SCHEDULE OF FEES FOR CONSULAR SERVICES—Continued

Item No.	Fee
(d) Supervising telephone depositions (per hour or part thereof over the first hour)	Consular time (Item 75) plus expenses.
(e) Providing seal and certification of depositions	$415.
53. Exemptions: Deposition or executing commissions to take testimony. Fees (Item 52) will not be charged when the service is performed:	
(a) At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant time required and/or expenses would be incurred).	NO FEE.
(b) Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of Federal court on behalf of an indigent party.	NO FEE.
(Items 54 through 60 vacant.)	
SERVICES RELATING TO VESSELS AND SEAMEN	
61. Shipping and Seaman's services: Including but not limited to recording a bill of sale of a vessel purchased abroad, renewal of a marine radio license, and issuance of certificate of American ownership.	Consular time (Item 75) plus expenses.
(Items 62 through 70 vacant.)	
ADMINISTRATIVE SERVICES	
71. Non-emergency telephone calls	$10 plus long distance charge.
72. Setting up and maintaining a trust account: For 1 year or less to transfer funds to or for the benefit of a U.S. citizen in need in a foreign country.	$30.
73. Transportation charges incurred in the performance of fee and no-fee services when appropriate and necessary	Expenses incurred.
74. Return check processing fee	$25.
75. Consular time charges: As required by this Schedule and for fee services performed away from the office or during after-duty hours (per hour or part thereof/per consular employee).	$231.
76. Photocopies (per page)	$1.
(Items 77 through 80 vacant.)	

PART 51—PASSPORTS

3. In § 51.51, revise paragraph (d) to read as follows:

§ 51.51 Passport fees

* * * * *

(d) A surcharge in the amount of twenty-two dollars ($22) on the filing of each application for a passport book, in the amount of twenty-two dollars ($22) on the filing of each application for a passport card for an applicant age 16 or over, and in the amount of fifteen dollars ($15) on the filing of each application for a passport card for an applicant under age 16, in order to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 (8 U.S.C. 1185 note). The surcharge will be recovered by the Department of State from within the passport application fee reflected in the Schedule of Fees for Consular Services.

* * * * *

Dated: February 3, 2010.

Patrick Kennedy,

Under Secretary of State for Management, Department of State.

[FR Doc. 2010–2816 Filed 2–8–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–051–FOR; Docket ID: OSM–2009–0013]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). North Dakota proposes revisions to rules and statutes that would allow the revegetation responsibility period to be reduced from ten years to five years for lands eligible for remining. North Dakota intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. March 11, 2010. If requested, we will hold a public hearing on the amendment on March 8, 2010. We will accept requests to speak until 4 p.m., m.s.t. on February 24, 2010.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* OSM is listed as Surface Mining Reclamation and Enforcement. Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Jim Fulton, Director, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202.

Instructions: All submissions received must include the agency name and ND–051–FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to viewing the docket and obtaining copies of documents at *http://*

www.regulations.gov, you may review copies of the North Dakota program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Field Office Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Room 1018, Casper, Wyoming 82604–1018, 307–261–6552, *jfleischman@osmre.gov.*

James Deutsch, Director, Reclamation Division, Public Service Commission, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58505–0480, 701–328–2400, 1–877–245–6685, *ndpsc@nd.gov, http://www.nd.gov/psc.*

FOR FURTHER INFORMATION CONTACT: Jeffery Fleischman, Field Office Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 150 East B Street, Room 1018, Casper, Wyoming 82604–1018, 307–261–6552, *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15, 934.16, and 934.30.

II. Description of the Proposed Amendment

By letter dated November 12, 2009, North Dakota sent us a proposed amendment to its regulatory program approved under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment has been assigned Administrative Record Docket ID: OSM–2009–0013. North Dakota sent the amendment in as a result of amendments made to SMCRA in December 2006, and revisions made to OSM's regulations on November 14, 2008, at 73 FR 67576. The 2006 amendments and the OSM regulatory revisions removed the expiration date for remining incentives initially authorized on October 24, 1992, and codified at sections 510(e) and 515(b)(20)(B) of SMCRA. Those sections provided incentives for eligible remining operations including a reduced revegetation responsibility periods (2 years in the East and 5 years in the West). However, those remining incentives had a statutorily defined expiration date of September 30, 2004. *See* 30 U.S.C. 1260(e) and 1265(b)(20)(B) (1993).

Specifically, North Dakota proposes revisions to the North Dakota Century Code at Chapter 38–14.1–24(18) (Environmental protection performance standards); 38–14.2–14(2), and to the North Dakota Administrative Code at Article 69–05.2–09–02(14) (Permit applications—operation plans—maps and plans) and Article 69–05.2–22–07(2) and (4)(i) (Performance standards—Revegetation—Standards for success).

North Dakota proposes to reduce the reclamation liability period on previously mined areas from ten years to five years. This change will apply to the North Dakota Century Code as well as the North Dakota Administrative Code. North Dakota defines previously mined areas as "lands that were affected by coal mining activities prior to January 1, 1970." North Dakota also proposes to require remining permits to include additional maps and information addressing potential environmental and safety problems related to prior mining activities that might be reasonably anticipated to occur at the mining site.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 24, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been

scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 15, 2009.

Richard M. Holbrook,

Acting Director, Western Region.

[FR Doc. 2010–2765 Filed 2–8–10; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No: WY–038–FOR; Docket ID: OSM–2009–0012]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Wyoming proposes numerous revisions and additions to rules concerning revegetation and cropland success standards, normal husbandry practices, shrub reclamation standards, fish and wildlife enhancement measures, cultural and historic resources, prime farmland, siltation structures and impoundments, and operator information. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. March 11, 2010. If requested, we will hold a public hearing on the amendment on March 8, 2010. We will accept requests to speak until 4 p.m., m.s.t. on February 24, 2010.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2009–0012. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions. You can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Rm. 1018,Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the "III. Public Comment Procedures" in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at *http://www.regulations.gov,* you may review copies of the Wyoming program, this amendment, a listing of any public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Denver, Colorado 82601–1018, 307/261–06547, *JFleischman@osmre.gov.*

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, 307/777–7046, *jcorra.state.wy.us.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6547. Internet: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated October 15, 2009, Wyoming sent us a proposed amendment to its approved regulatory program [Administrative Record Docket ID No. OSM–2009–0012]. Wyoming sent the amendment in response to: Portions of a February 21, 1990, letter that we sent to Wyoming in accordance with 30 CFR 732.17(c); previous OSM disapprovals at 30 CFR 950.12(a)(6) and (7); and, required program amendments at 30 CFR 950.16(f), (l), (m), (p), and (u). The amendment also includes changes made at Wyoming's own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Wyoming proposes to amend Chapters 1, 2, 4, 5, and Appendix A of the Land Quality Division (LQD) Coal Rules and Regulations (R&R) to address required program amendments and other deficiencies identified by OSM. The proposed changes are intended to clarify baseline vegetation requirements and revegetation reclamation plan requirements, clarify revegetation success standards and codify normal husbandry practices, reorganize and clarify species diversity and shrub density requirements, and revise and add definitions supporting those proposed changes. Wyoming also proposes rule changes to address several miscellaneous deficiencies.

Specifically, Appendix A of the LQD R&R contains rules on vegetation sampling methods and reclamation success standards for shrubs on reclaimed lands. In August of 2006, OSM published new rules that no longer required sampling and statistical methods to be included in the rules of the regulatory authority. Consequently, much of Appendix A was no longer required and Wyoming proposes to delete Appendix A entirely and relocate portions thereof into Chapters 1, 2, and 4. Wyoming's proposed changes to Chapter 1 contain definitions that were relocated from deleted Appendix A. The proposed changes include new and revised definitions intended to clarify current or proposed rules and/or sampling methods in support of proposed changes in Chapters 2 and 4. The proposed changes include: New definitions for "Regulatory categories;" new definitions related to normal "Husbandry practices;" revisions to the rules on "Reference areas;" revision to the "Eligible land" definition; revision to the "Pastureland" definition; and addition of the "Species lacking creditable value" definition. Wyoming also proposes to substantially reorganize the structure of Chapter 2 to revise Section 1 (General Requirements) and divide Section 2 (Application Content Requirements) into five new sections including Adjudication Requirements; Vegetation Baseline Requirements;

General Baseline Requirements; Mine Plan; and Reclamation Plan.

Similarly, Wyoming proposes to substantially reorganize the structure of Chapter 4 Section 2(d) into two new subsections with subsection (i) containing general revegetation performance standards and most of the current Section 2(d) rules, and adding rules dealing with normal husbandry practices. Subsection (ii) contains Revegetation Success Standards listed by post-mine land use categories and includes new rules for Fish and Wildlife Habitat; Postmining Wetlands; Developed Water Resource; Recreational; and a new provision within the current land use rule for Special Success Standards. Wyoming also proposes to combine the standards for grazingland and pastureland into a single section and proposes new Chapter 4 Appendix 4A, which describes the different shrub standard options, and is relocated from deleted Appendix A. Lastly, Wyoming proposes changes to its rules in Chapters 2, 4, and 5 regarding cultural and historic resources, prime farmland, siltation structures and impoundments, and operator information.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at *http://www.regulations.gov.* While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on February 24, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse

effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 2009.

James F. Fulton,

Acting Regional Director, Western Region.

[FR Doc. 2010–2781 Filed 2–8–10; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–HA–0029; 0720–AB22]

32 CFR Part 199

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)/ TRICARE: Inclusion of TRICARE Retail Pharmacy Program in Federal Procurement of Pharmaceuticals

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Reconsideration and request for comments.

SUMMARY: This is notification of an additional opportunity to comment on the final rule of March 17, 2009, implementing provisions of section 703 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008). This statute extended pharmaceutical Federal Ceiling Prices (FCPs) to TRICARE Retail Pharmacy Program prescriptions. The Department of Defense (DoD) issued a final rule on March 17, 2009, implementing the law. On November 30, 2009, the U.S. District Court for the District of Columbia "ordered that the final rule is remanded without vacatur for the Defense Department to consider in its discretion whether to readopt the current iteration of the rule or adopt another approach to implement 10 U.S.C. 1074g(f)." As part of DoD's reconsideration, DoD solicits public comments on the implementation of the statute, DoD's resulting regulations, and the matters addressed for DoD's consideration in the Court's Memorandum Opinion.

DATES: Written comments received at the address indicated below by March 11, 2010 will be considered and addressed in the final rule.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this FR document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Rear Admiral Thomas McGinnis, Chief, Pharmacy Operations Directorate, TRICARE Management Activity, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION:

A. Background

Section 703 of NDAA–08 enacted 10 U.S.C. 1074g(f). It provides that with respect to any prescription filled on or after the date of enactment (January 28, 2008), the TRICARE Retail Pharmacy Program shall be treated as an element of DoD for purposes of the procurement of drugs by Federal agencies under 38 U.S.C. 8126 to the extent necessary to ensure pharmaceuticals paid for by DoD that are provided by network retail pharmacies to TRICARE beneficiaries are subject to FCPs. This section 8126 established FCPs for covered drugs (requiring a minimum 24 percent discount) procured by DoD and three other agencies from manufacturers. The NDAA required implementing regulations.

DoD issued a proposed rule July 25, 2008 (73 FR 43394–97). It featured voluntary agreements with manufacturers, tied to preferred Uniform Formulary status, to pay DoD refunds for drugs entered into the normal commercial chain of transactions that end up as prescriptions given to TRICARE beneficiaries and paid for by DoD, the refund amount being the portion of the price of the drug sold by the manufacturer that exceeds the FCPs. The proposed rule also

solicited comment regarding any other appropriate and legally permissible implementation approach.

DoD issued a final rule March 17, 2009 (74 FR 11279–93), which was similar to the proposed rule. The preamble to the final rule discussed DoD's effort, particularly in the use of voluntary agreements tied to formulary status, to find "common ground" with the drug industry, which opposes FCPs. The preamble also stated that DoD interpreted the statute as automatically capping the price manufacturers may charge for those drugs that enter into the commercial chain of transactions that end up as TRICARE-paid prescriptions, resulting in the conclusion that the amount above the FCP was an overpayment by DoD, which in turn required a refund of the overpayment. After the final rule became effective, May 26, 2009, drug companies signed voluntary agreements covering approximately 99 percent of TRICARE retail prescriptions.

However, at the same time, there was a litigation challenge to the validity of the final rule in a case called *Coalition for Common Sense in Government Procurement* v. *U.S.,* U.S. District Court for the District of Columbia, Civ. No. 08–996 (JDB), 2009 U.S. Dist. LEXIS 110746. The Court issued a decision November 30, 2009. This decision had four major points:

- Although 10 U.S.C. 1074g(f) requires that FCPs shall apply, the statute does not specify *how* they will apply. DoD incorrectly interpreted the statute as *requiring* manufacturer refunds, to the exclusion of other possible approaches. DoD must reconsider the implementation of the statute as a function of its discretionary judgment, rather than only as a legal interpretation. For example, DoD should exercise its discretion to consider "which of the five parties that participate in the retail pharmacy program—manufacturers, wholesalers, network pharmacies, private pharmacy benefit managers, and TRICARE beneficiaries—must bear any costs associated with imposing the Federal Ceiling Prices."
- While DoD considers whether to readopt the final rule as it currently stands or to change it, the final rule will remain in effect, as will the manufacturer agreements that cover approximately 99 percent of TRICARE retail prescriptions. (This is the effect of the Court's Order that the final rule is "remanded without vacatur.")
- DoD correctly interpreted the statute as applying FCPs to all prescriptions filled on or after January 28, 2008.
- The Court ordered that DoD file a status report with the Court by not later than March 1, 2010, "documenting its consideration on remand."

B. Invitation of Additional Public Comments

Although the Court did not specifically require more public comments, DoD invites public comments on the final rule issued March 17, 2009, as well as additional comments regarding any other appropriate and legally permissible implementation approach. DoD recommends that interested parties focus their comments on those matters that the Court addressed as requiring DoD reconsideration on the remand of the final rule. In considering alternative approaches, DoD intends to use at least the following three criteria (and welcomes comment on other suggested criteria): (1) Harmony with the statute and legislative history; (2) consistency with best business practice; and (3) practicability of administration. In addition to the citations noted above, to assist interested parties, the final rule and the Court's Order and Memorandum Opinion are posted on the TRICARE Pharmacy Program Web site at: *http://www.tricare.mil/pharm_mfg/default.cfm.*

Dated: February 3, 2010.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2666 Filed 2–8–10; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0706; FRL–9111–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Removal of NO_X SIP Call Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia that removes West Virginia's nitrogen oxides (NOx) SIP Call rules. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 11, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0706 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0706, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket=s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0706. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: January 22, 2010.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–2674 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0010; FRL–9111–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Carbon Monoxide Emissions from Basic Oxygen Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of replacing the existing requirements for the control of carbon monoxide (CO) emissions from basic oxygen furnaces (BOFs) at steel mills with a new CO standard for BOFs at steel mills. In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 11, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0010 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2010–0010, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information on this SIP revision, which replaces the existing requirements for CO emissions from BOFs at steel mills with a new regulation that establishes a new, equivalent CO standard for BOFs in steel mills in Maryland, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: January 22, 2010.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–2676 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0113–200709(b); FRL–9098–4]

Approval and Promulgation of Implementation Plans; Georgia: State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Georgia State Implementation Plan (SIP), submitted by the Georgia Environmental Protection Division on September 26, 2006, with a clarifying revision submitted on November 6, 2006. The proposed revisions include multiple modifications to Georgia's Air Quality Rules found at Chapter 391–3–1. These revisions are part of Georgia's strategy to meet the national ambient air quality standards. EPA is proposing to approve Georgia's SIP revisions pursuant to section 110 of the Clean Air Act.

EPA is not acting on revisions to rules 391–3–1–.01(qqqq), 391–3–1–.02(2)(zz), 391–3–1–.02(2)(mmm), 391–3–1–.02(6)(a), 391–3–1–.03(6)(g), and 391–3–1–.03(6)(i) at this time. EPA is also not acting on revisions to rule 391–3–1–02(2)(ooo), as Georgia has submitted a revised version of the rule. Additionally, we are not acting on several revisions to the September 26, 2006, SIP submittal, that are not part of the federally approved SIP.

DATES: Written comments must be received on or before March 11, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number, "EPA–R04–OAR–2007–0113," by one of the following methods:

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

2. *E-mail: benjamin.lynorae@epa.gov.*

3. *Fax:* 404–562–9019.

4. *Mail:* "EPA–R04–OAR–2007–0113," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register,** EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: December 11, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–2707 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0664; FRL–9112–6]

Protection of Stratospheric Ozone: New Substitute in the Motor Vehicle Air Conditioning Sector Under the Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of October 19, 2009, proposing to find HFO–1234yf acceptable, subject to use conditions as a substitute for CFC–12 in motor vehicle air conditioning. The proposed substitute is a non-ozone-depleting substance and consequently does not contribute to stratospheric ozone depletion. In response to requests from several stakeholders and to allow comments on new supporting materials, this action reopens the public comment period through February 24, 2010.

DATES: The comment period for the proposed rule published October 19, 2009 (74 FR 53445), is reopened. Comments, identified by docket identification (ID) number EPA–HQ–OAR–2008–0664, must be received on or before February 24, 2010.

ADDRESSES: Submit your comments to docket EPA–HQ–OAR–2008–0664 by one of the following methods:

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

E-mail: a-and-r-Docket@epa.gov.

Mail: Environmental Protection Agency. EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA–HQ–OAR–2008–0664, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–

0664. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs; Environmental Protection Agency, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9163; fax number, (202) 343–2338; e-mail address: *sheppard.margaret@epa.gov.* Notices and rulemakings under the SNAP program are available on EPA's Stratospheric Ozone Web site at *www.epa.gov/ozone/snap/regulations.html.* For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

SUPPLEMENTARY INFORMATION:

Background

The statutory and regulatory background is described in detail in the **Federal Register** proposed rule of October 19, 2009 (74 FR 53445). In that document, EPA proposed to find HFO–1234yf acceptable as an alternative refrigerant for motor vehicle air conditioning, subject to use conditions. The refrigerant discussed in the proposed action, for which the comment period is reopened, is a non-ozone-depleting substance.

This Action

EPA has received a request for an extension to the comment deadline for this proposed rule.

This action reopens the comment period. The Agency will consider additional comments we receive through February 24, 2010 in response to this action. Note that additional information is available in the public docket, EPA–HQ–OAR–2008–0664, since publication of the October 19, 2009 proposed rule and a subsequent notice reopening the public comment period (December 28, 2009; 74 FR 68558). EPA will also consider comments received by February 24, 2010 in response to the previous **Federal Register** publication [EPA–OAR–2008–0664] before issuing a final regulatory determination for HFO–1234yf. We intend to issue a regulatory determination as expeditiously as possible following consideration of the comments and information we receive.

Dated: February 3, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–2829 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[ET Docket No. 04–35, RM 11588, DA 10–220]

California Public Utilities Commission Petition for Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Petition for rulemaking.

SUMMARY: The California Public Utilities Commission ("CPUC") filed a Petition for Rulemaking requesting that the Federal Communications Commission (Commission or FCC grant State public utilities commissions direct access to the Commission's Network Outage Reporting System (NORS). The CPUC also requests password-protected access to California-specific disruption and outage data in the NORS. The FCC seeks comment on this petition.

DATES: Submit statements in support of or in opposition to the petition for rulemaking on or before March 4, 2010; replies to statements in support of or in opposition to the petition for rulemaking should be submitted on or before March 19, 2010.

ADDRESSES: You may submit comments, identified by RM–11588 and/or ET Docket No. 04–35, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *People With Disabilities:* Contact the FCC to request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) by e-mail: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information contact Jean Ann Collins, Deputy Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, at (202) 418- 2792 or *jeanann.collins@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Public Safety and Homeland Security Bureau invites public comment on the petition for rulemaking filed on November 12, 2009, by the California Public Utilities Commission ("CPUC"). The CPUC petitions the Commission, pursuant to Section 1.401 of the Commissions rules, requesting that the Federal Communications Commission (Commission or FCC) grant State public utilities commissions direct access to the Commission's Network Outage Reporting System (NORS) database. The CPUC also informally requests, pursuant to Section 1.41 of the Commission's rules, that the Commission act to allow the CPUC password-protected access to the NORS database that is "limited to California-specific disruption and outage data."

NORS is the Web-based filing system through which certain communications providers submit reports to the Commission of disruptions to communications as required by part 4 of the Commission's rules. Reports of service disruptions filed in NORS are presumed to be confidential. Currently, the Commission shares NORS data only with the Department of Homeland Security (DHS).

CPUC states that the Commission found that mandatory reporting of network outages was "the only reliable way to collect this important information for use by this Commission and, where appropriate, for other government entities." The CPUC asserts that, during the part 4 rulemaking proceeding, no State public utility commission requested access to the part 4 service disruption data and the Commission did not address whether it should or would grant State public utilities commissions the same direct access to the NORS reports that it provided to DHS.

CPUC states that because the public health and safety, as well as California's economy, depend heavily on reliable and well functioning wireline and wireless voice and data communications networks, it is critical that the CPUC have access to the same level of service outage detail found in NORS reports in order to effectively analyze the data. CPUC adds that State commissioners, like the FCC, are responsible for overseeing the reliability and security of their State's respective communications infrastructures and, in times of crisis, local and State authorities are often the first responders. CPUC states that, because of this, California has adopted "the FCC's NORS requirements" and implemented safeguards to ensure the confidentiality of the information received.

CPUC asserts that its goal is to obtain the data necessary to perform its "traditional role of protecting public health and safety through monitoring of communications network functionality" without requiring duplicative reporting by telecommunications providers. Acknowledging national security concerns, it seeks to allow states access to the NORS database if they can show that appropriate protections are in place that would ensure that the confidentiality of the data is maintained.

The petition for rulemaking is available for public inspection and copying in the Commission's Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Copies of the request also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, ET Docket No. 04–35. Copies of the request also are available from Best Copy and Printing, Inc., telephone (800) 378–3160, facsimile (301) 816–0169, e-mail *fcc@bcpiweb.com.*

Pursuant to section 1.405 of the Commission's rules, 47 CFR 1.405, interested parties may file statements in support of or in opposition to the petition for rulemaking not later than March 4, 2010. Any interested parties may file replies to statements in support of or in opposition to the petition for rulemaking not later than March 19, 2010. Statements and replies may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*or the Federal eRulemaking Portal: *http://www.regulations.gov.*

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8 a.m. to 7 p.m.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

In addition, interested parties shall send one copy of their statements and replies to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, e-mail *fcc@bcpiweb.com.*

Filings and comments are also available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, ET Docket No. 04–35. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300 or (800) 378–3160, fax: (202) 488–5563, or via e-mail *fcc@bcpiweb.com.*

People With Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

James Arden Barnett, Jr.,

Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission.

[FR Doc. 2010–2772 Filed 2–8–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 75, No. 26

Tuesday, February 9, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 3, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 1942–A, Community Facility Loans.

OMB Control Number: 0575–0015.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency within the Rural Development mission area of the U.S. Department of Agriculture. The Community Programs Division of the RHS administers the Community Facilities program under 7 CFR part 1942, Subpart A. The Rural Utilities Service also services outstanding Water and Waste loans under 7 CFR part 1942, Subpart A. Rural Development provides loan and grant funds through the Community Facilities program to finance many types of projects varying in size and complexity, from large general hospitals to small fire trucks. The facilities financed are designed to promote the development of rural communities by providing the infrastructure necessary to attract residents and rural jobs. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,231.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 55,905.

Rural Housing Service

Title: 7 CFR 3575–A, Community Programs Guaranteed Loans.

OMB Control Number: 0575–0137.

Summary of Collection: The Rural Housing Service (RHS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of essential community facilities primarily serving rural residents. The Community Facilities Division of the RHS is considered Community Programs under the 7 CFR, part 3575, subpart A. Implementation of the Community Programs guaranteed loan program was affected to comply with the Appropriations Act of 1990 when Congress allocated funds for this authority. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed Community Facilities loans. RHS will collect information using several forms.

Need and Use of the Information: RHS will collect information to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 34,000.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 47,178.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–2712 Filed 2–8–10; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 3, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information

on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Products of Poultry and Birds.

OMB Control Number: 0579–0141.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of the health of animals under the Animal and Plant Health Inspection Service (APHIS) regulatory authority. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, and Sections 10401–18 of Public Law 107–171, dated May 13, 2002, and the Farm Security and Rural Investment Act of 2002. The regulations under which disease prevention activities are contained are in Title 9, Chapter 1, Subchapter D, and Parts 91 through 99 of the Code of Federal Regulations. The purpose of these regulations is to allow poultry meat that originates in the United States to be shipped, for processing purposes, to a region where exotic Newcastle disease exists, and then returned to the United States. The process entails the use of five information collection activities in the form of a certificate of origin that must be issued, including serial numbers that must be recorded, records that must be maintained, and cooperative service agreements that must be signed and an application for Permit, VS 17–129.

Need and Use of the Information: APHIS will collect information to ensure that imported poultry carcasses pose a negligible risk of introducing END into the United States.

Description of Respondents: Business or other for-profit; Federal.

Number of Respondents: 4.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 8.

Animal and Plant Health Inspection Service

Title: Permanent, Privately Owned Horse Quarantine Facilities.

OMB Control Number: 0579–0313.

Summary of Collection: The Animal Health Protection Act (7 U.S.C. 8301–8317) provides the Secretary of Agriculture broad authority to prohibit or restrict the importation or entry of any animal, article, or means of conveyance, if determined that the prohibition or restriction is necessary to prevent the introduction into or spread within the United States of any pest or disease of livestock. The Animal and Plant Health Inspection Service (APHIS) regulations in subpart C of part 93, on the importation of horses include requirements for the approval and establishment of permanent, privately owned horse quarantine facilities that are operated under APHIS supervision. These regulations necessitate the use of several information collection activities when applicants apply for approval to establish and operate permanent, privately owned quarantine facilities for horses.

Need and Use of the Information: APHIS will collect the following information: (1) Environment Certification, (2) Application for Facility Approval, (3) Service Agreements, (4) Letter Challenging Withdrawal for Facility Approval, (5) Letter Notifying APHIS of Facility Closure, (6) Compliance Agreement, (7) Security Instructions, (8) Alarm Notification, (9) Security Breach, (10) List of Personnel, (11) Signed Statements, (12) Daily Log, and (13) Request for Variance.

Without the information APHIS would be unable to approve permanent, privately owned horse quarantine facilities.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 11.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 21.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–2713 Filed 2–8–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request, Correction

February 3, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Industry Response to Noncompliance Records

OMB Control Number: 0583–New

Summary Of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U. S.C. 601 *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statues mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are not adulterated, wholesome, and properly labeled and packaged. If FSIS in-plant personnel discover noncompliance with regulatory requirements they issue Noncompliance Records (NRs). The Noncompliance Record, FSIS Form 5400–4, serves as FSIS' official record of noncompliance with one or more regulatory requirements.

Need and Use of the Information: FSIS will use the form 5400–4 to document their findings and provided written notification of the establishment's failure to comply with regulatory requirement(s). The establishment management receives a copy of the form and has the opportunity to respond in writing using the Noncompliance Record form.

Description of Respondents: Business or other for-profit.

Number of Respondents: 6,800.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 136,000.

Food Safety and Inspection Service

Title: Food Safety Education Conference.

OMB Control Number: 0583–New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U. S.C. 601 *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statues mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are not adulterated, wholesome, and properly labeled and packaged. FSIS is conducting a Food Safety Conference to provide a forum for attendees to engage in a meaningful information exchange about strategies for sharing safe food handling information with consumers and at-risk persons to reduce their risk of contracting a foodborne illness.

Need and Use of the Information: FSIS and NSF International will collect the following personal data related to individual registering on-line using their credit card: Name, organization, street address, city or town, State, country, telephone number, and credit card information. The information will be used to collect payment and make hotel reservations for the respondents.

Description of Respondents: Individuals or households.

Number of Respondents: 400.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 67.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–2714 Filed 2–8–10; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by April 12, 2010.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5162, South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

Title: Weather Radio Transmitter Grant Program.

OMB Control Number: 0572–0124.

Type of Request: Extension of a currently approved information collection.

Abstract: The National Weather Service operates an All Hazards Early Warning System that alerts people in areas covered by its transmissions of approaching dangerous weather and other emergencies. The National Weather Service can typically provide warnings of specific weather dangers up to fifteen minutes prior to the event. At present, this system covers all major metropolitan areas and many smaller cities and towns; however, many rural areas lack NOAA Weather Radio coverage. The Rural Utilities Service's Weather Radio Transmitter Grant Program finances the installation of new transmitters to extend the coverage of the National Oceanic and Atmospheric Administration's Weather Radio system (NOAA Weather Radio) in rural America thereby promoting public safety and awareness. The President of the United States and the United States Congress have made $5 million in grant funds available to facilitate the expansion of NOAA Weather Radio system coverage into rural areas that are not covered or are poorly covered at this time. This grant program will continue to provide grant funds, on an expedited basis, for use in rural areas and communities of 50,000 or less inhabitants. Grant funds are available immediately and applications will be processed on a first-come, first-served basis until the appropriation is used in its entirety. Grant funds are used to purchase and install NOAA Weather Radio transmitters and antennas that are combined with donated tower space and other site resources to establish new rural NOAA Weather Radio transmitters. Eligible applicants must be

non-profit corporations or associations (including Rural Development Utilities Programs electric and telecommunications borrower cooperatives), units of local or state government, or federally-recognized Indian tribes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 hours per response.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Date: January 26, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–2770 Filed 2–8–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0097]

Notice of Availability of Pest Risk Analyses for Importation of Fresh Figs, Pomegranates, and Baby Kiwi from Chile into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared two pest risk analyses, one with respect to fresh figs and pomegranates grown in Chile and one with respect to fresh baby kiwi fruit grown in Chile. The analyses evaluate the risks associated with the importation into the continental United States of fresh figs, pomegranates, and baby kiwi fruit from Chile. Based on those analyses, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of figs, pomegranates, and baby kiwi from Chile. We are making the pest risk analyses, as well as an environmental assessment we have prepared in connection with this action, available to the public for review and comment.

DATES: We will consider all comments that we receive on or before **April 12, 2010**.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0097*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0097, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0097.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information concerning figs and pomegranates from Chile, contact Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0754.

For information concerning baby kiwi fruit from Chile, contact Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received requests from the Government of Chile to allow the importation of fresh figs, pomegranates, and baby kiwi fruit from Chile into the United States. We have completed pest risk assessments to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on those pest risk assessments, have prepared risk management analyses to identify phytosanitary measures that could be applied to the commodities to mitigate the pest risk. We have concluded that fresh figs, pomegranates, and baby kiwi fruit can be safely imported into the continental United States from Chile using one or more of the five designated phytosanitary measures listed in § 319.56-4(b). Therefore, in accordance with § 319.56-4(c), we are announcing the availability of our pest risk analyses for public review and comment. The pest risk analyses may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analyses by calling or writing to the persons listed under **FOR FURTHER**

INFORMATION CONTACT. Please refer to the subject of the pest risk analysis that you wish to review when requesting copies. We have also prepared an environmental assessment in connection with this action which is available for review and comment in the same manner as the pest risk analyses.

After reviewing the comments we receive, we will announce our decision regarding the import status of fresh figs, pomegranates, and baby kiwi fruit from Chile in a subsequent notice. If the overall conclusions of the analyses and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of fresh figs, pomegranates, and baby kiwi fruit from Chile into the continental United States subject to the requirements specified in the risk management analyses.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of February 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–2795 Filed 2–9–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0092]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh False Coriander From Panama Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of fresh false coriander from Panama. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh false coriander from Panama. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 12, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0092*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0092, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0092.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest-risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk assessment as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Panama to allow the importation of fresh false coriander from Panama into the continental United States. We have completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on that pest risk assessment, have prepared a risk management document to identify phytosanitary measures that could be applied to fresh false coriander to mitigate the pest risk. We have concluded that fresh false coriander can be safely imported into the continental United States from Panama using one or more of the five designated phytosanitary measures listed in § 319.56-4(b). Therefore, in accordance with § 319.56-4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh false coriander from Panama in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of fresh false coriander from Panama into the continental United States subject to the

requirements specified in the risk management document.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of February 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–2782 Filed 2–8–10; 7:26 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0003]

Notice of Availability of a Pest Risk Analysis for the Importation of Fresh Male Summer Squash Flowers From Israel Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of fresh male summer squash flowers from Israel into the continental United States. Based on that analysis, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the pest risk. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 12, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0003*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2010-0003, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0003.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Israel to allow the importation of fresh male summer squash flowers, *Cucurbita pepo* L. into the continental United States. Currently, fresh male summer squash flowers are not authorized for entry from Israel. We completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation if such imports were to be allowed. Based on the pest risk assessment, we then completed a risk management document to identify phytosanitary measures that could be applied to mitigate the risks of introducing or disseminating the identified pests via the importation of fresh male summer squash flowers from Israel. We have concluded that fresh male summer squash flowers can safely be imported into the continental United States from Israel using one or more of the five designated phytosanitary measures listed in § 319.56-4(b). Therefore, in accordance with § 319.56-4(c), we are announcing the availability of our pest risk analysis for public review and comment. The analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the analyses by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis that you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh male summer squash flowers from Israel in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for the importation of fresh male summer squash flowers from Israel into the continental United States subject to the requirements specified in the risk management document.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of February 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–2784 Filed 2–8–10; 7:27 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0037]

Notice of Determination of Pest-Free Areas in the Republic of South Africa

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are recognizing 16 additional magisterial districts in 3 provinces in the Republic of South Africa as pest-free areas for citrus black spot. Based on our site visit to the area and our review of the documentation submitted by South Africa's national plant protection organization, which we made available to the public for review and comment through a previous notice, the Administrator has determined that those districts meet the criteria in our regulations for recognition as pest-free areas for citrus black spot.

EFFECTIVE DATE: February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734-6280.

SUPPLEMENTARY INFORMATION: Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. One of the designated phytosanitary measures is that the fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

Under the regulations in § 319.56-5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standards for Phytosanitary Measures (ISPM) No. 4, "Requirements for the Establishment of Pest-Free Areas." The international standard was established by the International Plant Protection Convention (IPPC) of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

In accordance with that process, we published a notice[1] in the **Federal Register** on July 27, 2009 (74 FR 36999-37000, Docket No. APHIS-2009-0037), in which we announced the availability, for review and comment, of a commodity import evaluation document titled "Recognition of Additional Magisterial Districts as Citrus Black Spot Pest-Free Areas for the Republic of South Africa." In this document, we examined the survey protocols and other information provided by South Africa's national plant protection organization (NPPO) relative to its system to establish freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom from citrus black spot (*Guignardia citricarpa*).

We initially solicited comments on the notice for 60 days ending on September 25, 2009. However, we extended the comment period to October 13, 2009, to give interested persons additional time to prepare and submit comments. We received 12 comments by that date, all but 1 of which supported the recognition of the 16 additional magisterial districts in 3 provinces in South Africa as pest-free areas. Commenters included members of Congress, a diplomatic official, fumigators, importers, distributors, packers, growers, and a citrus marketing association.

The commenter who disagreed with our action to recognize the pest-free areas cited two issues.

The first issue concerns the reliability of the data used by APHIS to support its recognition of pest-free areas for citrus black spot. The commenter stated that the survey data used by APHIS was largely derived from a sampling of noncommercial production blocks of citrus in the areas recognized as being pest-free, when most of the citrus destined for export to the United States would originate from commercial production blocks. The commenter suggested that APHIS obtain survey data specific to the commercial production blocks that will be exporting to the United States before recognizing these areas as being free of citrus black spot.

The South African NPPO collected data from both commercial and noncommercial production blocks to ensure uniform coverage of the survey region, and examined the data from both types of blocks to determine the pest status of the areas of concern. Because relatively few citrus orchards are currently established in these areas, many of the trees surveyed for citrus black spot are located in home gardens and backyards. None of the samples taken in these areas indicated the presence of citrus black spot.

The second issue raised by the commenter focused on the effectiveness of ongoing pest risk assessment and monitoring efforts in those areas recognized by APHIS as being pest-free. As support, the commenter cited a document produced by a European Union panel of plant health experts that assessed pest risk data provided by the South African NPPO.[2] The panel noted in its assessment that IPPC standards require that an intensive continuous monitoring program be in place to maintain a pest-free area, but that the NPPO of South Africa did not provide sufficient data for an accurate assessment of their monitoring program.

The NPPO of South Africa is a signatory to the IPPC and therefore observes phytosanitary treatment standards that are recognized by other signatories, including the United States. Under the regulations in § 319.56-5(a), APHIS requires that determinations of pest-free areas be made in accordance with standards established by the IPPC. In addition, § 319.56-5(b) requires that the survey protocol used by a foreign NPPO to determine and maintain pest-free status be approved by APHIS.

South Africa participates in an APHIS preclearance program for citrus intended for export to the United States. We only allow citrus from APHIS-approved pest-free areas to participate in the program. In the many years of import history with the preclearance program, which began in the mid-1990s,

[1] To view the notice, the commodity import evaluation document, and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0037*).

[2] "Pest risk assessment and additional evidence provided by South Africa on *Guignardia citricarpa* Kiely, citrus black spot fungus-CBS." *EFSA Journal* (2008) 925: 1-4.

we have not detected citrus black spot. However, if it were detected, export of the host material to the United States would be suspended from the production area and APHIS would request South Africa to conduct an investigation.

Therefore, in accordance with § 319.56-5(c), we are announcing the Administrator's determination that the magisterial districts of Boshof, Fauresmith, Jacobsdal, Koffiefontein, and Philippolis in the Free State Province; Christiania and Taung in the North West Province; and Barkly-wes/west, Gordonia, Hay, Herbert, Hopetown, Kenhardt, Kimberely, Namakwaland, and Prieska in the Northern Cape Province meet the criteria of § 319.56-5(a) and (b) with respect to freedom from citrus black spot. Accordingly, we are recognizing those magisterial districts as pest-free areas for citrus black spot and have added them to the list of pest-free areas, which may be viewed on the Internet at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/DesignatedPestFreeAreas.pdf*). The list of pest-free areas may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 3rd day of February 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–2846 Filed 2–8–10: 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee (LTFAC) will hold a meeting on February 23, 2010 at Sierra Nevada College, 999 Tahoe Boulevard, Incline Village, Nevada 89451–9500.

This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held February 23, 2010 beginning at 9 a.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at Sierra Nevada College, 999 Tahoe Boulevard, Incline Village, Nevada 89451–9500.

FOR FURTHER INFORMATION CONTACT: Arla Hams, Lake Tahoe Basin Management Unit (LTBMU), Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include:

- The Tahoe Working Group (TWG) will present their Lake Tahoe Southern Nevada Public Land Management Act (SNPLMA) Round 11 recommendation for capital projects and science themes. The LTFAC will discuss and with possible consensus, put forward a preliminary recommendation for public comment.
- Discuss the status of re-chartering and member nominations for the next LTFAC two year term.
- Public Comment.

Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements for the Committee before or after the meeting. Please refer any written comments attention Arla Hams, Lake Tahoe Basin Management Unit at the contact address stated above.

If you have questions concerning special needs for this public meeting, or to request sign language interpretation, contact Linda Lind at (530) 543–2787 or TTY (530) 543–0956, or via e-mail at *LLind@fs.fed.us.*

If another LTFAC meeting is needed to put forth the Round 11 preliminary recommendation for capital projects and science themes; due to time restraints the **Federal Register** notice will be published less than 15 calendar days prior to the meeting. There will be timely meeting notification through the LTBMU Web site (*http://www.fs.fed.us/r5/ltbmu/local/ltfac*).

Dated: February 2, 2010.

Terri Marceron,

Forest Supervisor.

[FR Doc. 2010–2671 Filed 2–8–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Deposit of Biological Materials

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this continuing 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 April 12, 2010.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–0022 Deposit of Biological Materials comment" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Brian Hanlon, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–5047; or by e-mail at *Brian.Hanlon@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The deposit of biological materials as part of a patent application is required by 35 U.S.C. 2(b)(2) and outlined in 37 CFR Ch. 1, Subpart G, 1.801–1.809. Every patent must contain a description of the invention sufficient to enable a person (knowledgeable in the relevant science), to make and use the invention as specified by 35 U.S.C. 112. The term biological includes material that is capable of self-replication either directly or indirectly. When the invention involves a biological material, sometimes words alone cannot sufficiently describe how to make and use the invention in a reproducible or repeatable manner. In such cases, the required biological material must be both known and readily available (neither condition alone is sufficient) or be deposited in a suitable depository that has been recognized as an International Depository Authority (IDA) established under the Budapest Treaty, or a depository recognized by the USPTO to meet the requirements of 35 U.S.C. 112.

In cases where a deposit is necessary, it must be made under conditions that assure access to those entitled thereto under 37 CFR 1.14 and 35 U.S.C. § 122

and upon issuance as a patent that all restriction to public access permanently removed.

In order to meet and satisfy requirements for international patenting, all countries signing the Budapest Treaty must recognize the deposit of biological material with any International Depository Authority (IDA).

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when the applicant or agent files a patent application with the USPTO or submits subsequent papers during the prosecution of the application to the USPTO.

III. Data

OMB Number: 0651–0022.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 3,500 responses per year for deposited materials and 1 response per year for depository approval.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 1 to 5 hours, depending upon the complexity of the situation, to gather, prepare, and submit the various documents in this information collection.

Estimated Total Annual Respondent Burden Hours: 3,505 hours per year.

Estimated Total Annual Respondent Cost Burden: $106,625 per year to submit the information to the USPTO. Using the professional hourly rate of $30 for a senior administrative assistant, the USPTO estimates $105,000 per year for salary costs associated with collecting and submitting the necessary deposit information. Using the professional hourly rate of $325 for attorneys in private firms, the USPTO estimates $1,625 per year in respondent cost burden associated with the average depository seeking approval to store biological material.

Item	Estimated time for response (hours)	Estimated annual responses	Estimated annual burden hours
Deposited Materials	1	3,500	3,500
Depository Approval	5	1	5
Total		3,501	3,505

Estimated Total Annual (non-hour) Respondent Cost Burden: $9,831,120. There are no maintenance or record keeping costs or filing fees associated with this information collection. There are, however, capital start-up and mailing costs.

Depositories charge fees to depositors; all depositories charge about the same rates for their services. For example, the American Type Culture Collection (ATCC), one of the world's leading biological supply houses and recognized patent depositories, offers comprehensive patent services for $2,500 per deposit. Most deposits received from outside the United States require an import permit from the U.S. Department of Agriculture (USDA) as well as a Public Health Service (PHS) permit, available from the Centers for Disease Control and Prevention (CDC), for importation of agents infectious to humans. There is no extra charge for this permit application processing. The USPTO estimates that the total non-hour respondent cost burden in the form of capital start-up costs amounts to $8,750,000.

In addition, this collection does have mailing costs. Biological deposits are generally shipped to the depository "Domestic Overnight" by Federal Express (FedEx) and, since depositors are urged to supply frozen or freeze-dried material, it must be packed in dry ice according to a representative from the Patent Department at ATCC. Dry Ice itself is considered dangerous goods and requires special packaging. Additional FedEx special handling charges for inaccessible dangerous goods shipments of $32.50 per shipment apply for temperature-sensitive biological materials and also for the dry ice. An average cost for shipping by FedEx "Domestic Overnight" is estimated to be $75. If the shipment requires pick-up by FedEx, there is an additional charge of $2.20. Special packaging is also required for these shipments. According to DG Supplies Inc., a supplier of infectious and diagnostic goods packaging, the average cost of frozen infectious shippers is estimated to be $199.19 per package of four for specimen shipments requiring refrigeration or dry ice. Therefore, postage costs average $308.89 per shipment, for a cost to respondents of $1,081,115 ($308.89 × 3,500).

The postage cost for a depository seeking recognition is estimated to be $4.80, sent to the USPTO by priority mail through the United States Postal Service. Since the USPTO estimates that it receives one request for recognition from a depository every four years, the postage cost averages $4.80 per depository request, for a rounded cost to respondents of $5.00.

The USPTO estimates that the (non-hour) respondent cost burden in the form of mailing costs amounts to $1,081,120 ($1,081,115 + $5).

Therefore, the USPTO estimates that the total (non-hour) respondent cost burden for this collection in the form of capital start-up costs ($8,750,000) and mailing costs ($1,081,120) is $9,831,120.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

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

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

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 2, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–2764 Filed 2–8–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Post Allowance and Refiling

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing 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 April 12, 2010.

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

- *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–0033 comment" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by e-mail to *Raul.Tamayo@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee (including the publication fee, if applicable) within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. If the fees are not paid within the designated time period, the application is abandoned and the applicant may petition the Director to accept a delayed payment with a satisfactory showing that the delay was unavoidable or unintentional. The Petition for Revival of an Application for Patent Abandoned Unavoidably (Form PTO/SB/61) and the Petition for Revival of an Application for Patent Abandoned Unintentionally (Form PTO/SB/64) are approved under information collection 0651–0031. The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18 and 1.311–1.317.

Chapter 25 of Title 35 U.S.C. provides that there are several actions that the applicant may take after issuance of a patent, including requesting the correction of errors in a patent. For original patents that are deemed wholly or partly inoperative, applicants may file a reissue application, which entails several formal requirements including an oath or declaration stating that the errors in the patent were not the result of any deceptive intention on the part of the applicant. The rules outlining these procedures are found at 37 CFR 1.171–1.178 and 1.322–1.325.

The public uses this information collection to pay fees for issued patents, to request corrections of errors in issued patents, and to submit applications for reissue patents. This collection previously included information requirements related to patent reexaminations. These items are being removed from this collection and have been submitted as a separate new collection, 0651–00XX Patent Reexaminations, which is currently under review by OMB.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO. Electronic submissions are made through EFS-Web, the USPTO's online filing system for patent applications and related documents.

III. Data

OMB Number: 0651–0033.

Form Number(s): PTO/SB/44/50/51/51S/52/53/56 and PTOL–85B.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 217,184 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 1.8 minutes (0.03 hours) to 2 hours to gather the necessary information, prepare the appropriate form or other document, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 65,832 hours per year.

Estimated Total Annual Respondent Cost Burden: $13,053,750 per year. The USPTO expects that the information in this collection will be prepared by attorneys, except for the Issue Fee Transmittal, which will be prepared by paraprofessionals. Using the professional rate of $325 per hour for attorneys in private firms, the USPTO estimates that the respondent cost burden for attorneys submitting the information in this collection will be $9,346,350 per year. Using the paraprofessional rate of $100 per hour, the USPTO expects that the respondent cost burden for submitting the Issue Fee Transmittal will be $3,707,400 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Certificate of Correction (PTO/SB/44)	1 hour	26,000	26,000
Reissue Documentation	2 hours	850	1,700
Reissue Patent Application Transmittal (PTO/SB/50)	12 minutes	850	170
Reissue Application Declaration by the Inventor or the Assignee (PTO/SB/51/52).	30 minutes	1,135	568
Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175) (PTO/SB/51S).	1.8 minutes	900	27
Reissue Application: Consent of Assignee; Statement of Non-assignment (PTO/SB/53).	6 minutes	1,230	123
Reissue Application Fee Transmittal Form (PTO/SB/56)	12 minutes	850	170
Issue Fee Transmittal (PTOL–85B)	12 minutes	12,975	2,595
Issue Fee Transmittal (EFS-Web) (PTOL–85B)	12 minutes	172,394	34,479

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Totals		217,184	65,832

Estimated Total Annual Non-hour Respondent Cost Burden: $284,329,886 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of fees, postage costs, and recordkeeping costs.

The total estimated fees for this collection are calculated in the accompanying table. The Reissue Application Fee Transmittal Form (PTO/SB/56) includes the fees for the reissue application under 37 CFR 1.16, including the basic filing fee, search fee, and examination fee. These fees cover all parts of the application, including reissue documentation, reissue application transmittal, reissue application declarations, and consent of assignee or statement of non-assignment. There is no fee for the supplemental declaration for a reissue patent application to correct an "errors" statement. Additionally, there are several different issue fees under 37 CFR 1.18 depending on the type of patent being issued, whether a publication fee is required, and whether the inventor is entitled to the discounted small entity fee. The USPTO estimates that the total fees associated with this collection will be $284,296,310 per year.

Item	Estimated annual responses	Fee amount	Estimated annual fees
Certificate of Correction (PTO/SB/44)	26,000	$100.00	$2,600,000.00
Reissue Documentation	850	0.00	0.00
Reissue Patent Application Transmittal (PTO/SB/50)	850	0.00	0.00
Reissue Application Declaration by the Inventor or the Assignee (PTO/SB/51/52)	1,135	0.00	0.00
Supplemental Declaration for Reissue Patent Application to Correct "Errors" Statement (37 CFR 1.175) (PTO/SB/51S)	900	0.00	0.00
Reissue Application: Consent of Assignee; Statement of Non-assignment (PTO/SB/53)	1,230	0.00	0.00
Reissue Application Fee Transmittal Form (PTO/SB/56)	510	1,520.00	775,200.00
Reissue Application Fee Transmittal Form (small entity) (PTO/SB/56)	340	760.00	258,400.00
Issue Fee (utility patent, no publication fee) (PTOL–85B)	11,162	1,510.00	16,854,620.00
Issue Fee (utility patent, no publication fee, small entity) (PTOL–85B)	2,712	755.00	2,047,560.00
Issue Fee (utility patent, with publication fee) (PTOL–85B)	118,518	1,810.00	214,517,580.00
Issue Fee (utility patent, with publication fee, small entity) (PTOL–85B)	28,802	1,055.00	30,386,110.00
Issue Fee (design patent, no publication fee) (PTOL–85B)	13,218	860.00	11,367,480.00
Issue Fee (design patent, no publication fee, small entity) (PTOL–85B)	9,976	430.00	4,289,680.00
Issue Fee (plant patent, no publication fee) (PTOL–85B)	50	1,190.00	59,500.00
Issue Fee (plant patent, no publication fee, small entity) (PTOL–85B)	34	595.00	20,230.00
Issue Fee (plant patent, with publication fee) (PTOL–85B)	533	1,490.00	794,170.00
Issue Fee (plant patent, with publication fee, small entity) (PTOL–85B)	364	895.00	325,780.00
Totals	217,184		284,296,310.00

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 88 cents and that approximately 15,200 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is $13,376 per year.

When submitting the information in this collection to the USPTO electronically, the customer is strongly urged to retain a copy of the acknowledgment receipt as evidence that the submission was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the acknowledgment receipt and that approximately 201,984 responses per year will be submitted electronically, for a total of approximately 202 hours per year for printing this receipt. Using the paraprofessional rate of $100 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be $20,200 per year.

The total non-hour respondent cost burden for this collection in the form of fees, postage costs, and recordkeeping costs is $284,329,886 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 2, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–2760 Filed 2–8–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the preliminary results of the administrative review of certain polyester staple fiber from the People's Republic of China ("PRC"). This review covers the period June 1, 2008, through May 31, 2009.

EFFECTIVE DATE: February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry Huang or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4047 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2009, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain polyester staple fiber from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009). The preliminary results of this review are currently due no later than March 2, 2010.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, and evaluate surrogate value submissions for purposes of the preliminary results.

Therefore, the Department is extending the time limit for completion of the preliminary results of this administrative review by 101 days. The preliminary results will now be due no later than June 11, 2010. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 3, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–2800 Filed 2–8–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review

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

SUMMARY: On August 6, 2009, the Department of Commerce (the Department) published the preliminary results of the twelfth administrative review for the antidumping duty order on certain pasta from Italy. The review covers ten manufacturers/exporters: Domenico Paone fu Erasmo S.p.A. (Erasmo), Industria Alimentare Colavita, S.p.A. (Indalco), P.A.M. S.p.A. (PAM), Pasta Lensi (Lensi), Pastificio Fratelli Pagani S.p.A. (Pagani), Pastificio Labor S.r.L. (Labor), Pastificio Lucio Garofalo (Garofalo), Pastificio Riscossa F.Illi Mastromauro S.r.L. (Riscossa), Rummo S.p.A. Molino e Pastificio (Rummo), and Rustichella d'Abruzzo S.p.A. (Rustichella). The period of review (POR) is July 1, 2007, through June 30, 2008. PAM and Garofalo were selected as mandatory respondents.[1]

As a result of our analysis of the comments received, the final results differ from the preliminary results for PAM and Garofalo. The final weighted–average dumping margins for these companies are listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Victoria Cho (Garofalo) and Christopher Hargett (PAM), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5075 and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2009, the Department published the preliminary results of the twelfth administrative review of the antidumping duty order on certain pasta from Italy. *See Certain Pasta from Italy: Notice of Preliminary Results of Twelfth Antidumping Duty Administrative Review*, 74 FR 39285 (August 6, 2009) (*Preliminary Results*).

Petitioners,[2] PAM, Garofalo, Riscossa and Rummo submitted case briefs on November 20, 2009. Petitioners, Pam and Garofalo submitted rebuttal briefs on December 4, 2009. On August 6, 2009, PAM requested a hearing. A public hearing was held on December 14, 2009.

Scope of the Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il

[1] *See* Memorandum to James Terpstra, from the Team regarding Selection of Respondents for Individual Review, dated September 25, 2008.

[2] Petitioners are New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company.

Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Instituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009). The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States* (*HTSUS*). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Model Match Clarification

In the preliminary results we explained the basis for our clarification.

"In the eleventh review of pasta from Italy the Department stated that it would solicit comments from interested parties with respect to the appropriate standards and criteria to be applied in differentiating among wheat codes, and make any necessary changes and/or clarifications to the model match criteria for pasta to apply to all future respondents. *See Certain Pasta from Italy: Notice of Final Results of the Eleventh Administrative Review and Partial Rescission of Review*, 73 FR 75400 (December 11, 2008).

On January 9, 2009, we contacted interested parties and solicited comments on the following four factors: 1) industry standards, 2) measuring material cost differences, 3) defining commercial significance, and 4) physical characteristics. Parties submitted comments on February 23, 2009, and rebuttal comments on March 10, 2009.[3]

Because of a lack of consistency in the Department's treatment of separate wheat codes in model match decisions in previous determinations, we solicited comments in order to articulate a clearer statement of our policy. Our goal was to develop objective criteria that would apply in each review of this antidumping duty order. Petitioners and respondents in this review submitted factual information and comments. Based on our analysis of these comments, and our review of prior determinations, we propose to clarify and modify our treatment of the wheat code physical characteristic. *See* memorandum from James Terpstra, Program Manager, to John M. Andersen, Acting Deputy Assistant Secretary, entitled Preliminary Model Match Clarification on Pasta Wheat Code Classifications,' dated July 31, 2009. We propose replacing the existing single Wheat Code field with the following three fields: wheat species, form, and protein content.

We note that the threshold set forth in Protein Content corresponds to the minimum protein content of 12.5 percent established by the Italian Commodity Exchanges. We are requesting that interested parties provide comments on the proposed model match changes included there in. We will evaluate comments on the proposed methodology. Any new model match criteria developed will be applicable in the 2008–2009 and subsequent administrative reviews of pasta from Italy." *See* the *Preliminary Results* at 39286.

Subsequently we conducted verification and received case and rebuttal comments by the parties. We have addressed the arguments raised by the parties in the Issues & Decision Memorandum accompanying this notice. We have concluded that no changes from the approach proposed in the preliminary results are warranted. Accordingly, in future reviews we intend to replace the existing wheat code field with three new fields.

Old Field

Field 3.2: Type of Wheat

1 = 100 percent durum semolina
2 = 100 percent whole wheat
3 – n = specify categories as required

New Fields

Field 3.2: Wheat Species

1 = Durum wheat
2 = Emmer wheat
3 = Other (specify wheat species)

Field 3.3 Milling Form

1 = Made from 97–100 percent semolina
2 = Made from whole wheat
3 = Blend of semolina and other (*e.g.*, flour, with less than 97 percent semolina)

Field 3.4 Protein Content

1 = 12.5 percent or higher protein in finished pasta
2 = 10.00–12.49 percent protein in the finished pasta

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum*, dated concurrent with this notice and which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/, and is on file in the Central Records Unit, main Commerce Building, room 1117. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Final Results of Review

We determine that the following weighted–average margin exists for the period July 1, 2007, through June 30, 2008:

Manufacturer/exporter	Margin (percent)
PAM	8.54
Garofalo	16.26

For those companies not selected as mandatory respondents, we determine that the following simple average percentage margin[4] (based on the two reviewed companies) exists for the period July 1, 2006, through June 30, 2007:

Manufacturer/exporter	Margin (percent)
Erasmo	12.40
Indalco	12.40
Lensi	12.40
Pagani	12.40
Labor	12.40
Riscossa	12.40
Rummo	12.40
Rustichella	12.40

Duty Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly

[3] In addition, we sent a letter on June 4, 2009, soliciting additional information from PAM and Garafolo. PAM and Garafolo submitted responses on July 7, 2009.

[4] Because there are only two respondents for which a company-specific margin was calculated in this review, the Department has calculated a simple average margin to ensure that the total import quantity and value for each company is not inadvertently revealed.

to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)- specific *ad valorem* rate is greater than *de minimis* and we do not have reliable entered values, we calculate a per–unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) for Erasmo, Indalco, PAM, Lensi, Pagani, Labor, Garofalo, Riscossa, Rummo, and Rustichella, the cash deposit rate will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less–than-fair–value (LTFV) investigation, the cash deposit rate will continue to be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will be 15.45 percent, the all–others rate established in the implementation of the findings of the WTO Panel in *US – Zeroing (EC). See Implementation of the Findings of the WTO Panel in US – Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders*, 72 FR 25261 (May 4, 2007). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing 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 and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). 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 sanctionable violation.

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

Dated: February 2, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

General

Comment 1: Wheat Code Methodology
Comment 2: Application of Review–Specific All Other Rate

Garofalo

Comment 3: Garofalo's Submitted Wheat Code
Comment 4: Garofalo's Arms–Length Test

Comment 5: Cost Reporting Period

PAM

Comment 6: Collapsing of PAM's Wheat Code for Model Match
Comment 7: Inclusion of Transport Recovery in the U.S. Sales Calculation
Comment 8: Treatment of AGEA Performance Bond
Comment 9: General Expenses
Comment 10: Insurance Claim as an Offset to G&A Expense
Comment 11: Over–reported Costs

[FR Doc. 2010–2802 Filed 2–8–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 0907081109–0060–04]

RIN 0648–ZC10

NOAA Great Lakes Habitat Restoration Program Project Grants under the Great Lakes Restoration Initiative; Correction

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

ACTION: Notice of funding availability; Date correction.

SUMMARY: This notice corrects an error contained in the notice published in the **Federal Register** on January 19, 2010. That notice announced the NOAA Great Lakes Habitat Restoration Program Project Grants competition and contained an incorrect date for postmark of hard copy applications.

DATES: Hard copy applications must be postmarked, or provided to a delivery service and documented with a receipt, by 11:59 p.m. EST on February 16, 2010. Hard copy applications postmarked or

provided to a delivery service after 11:59 p.m. EST February 16, 2010 will not be considered for funding. Electronic applications must be submitted through *www.grants.gov* by 11:59 p.m. EST on February 16, 2010.

ADDRESSES: NOAA Restoration Center (F/HC3) NOAA Fisheries, Office of Habitat Conservation, 1315 East West Highway, Rm. 14730, Silver Spring, MD 20910 Attn: Great Lakes HabitatRestoration Project Applications.

FOR FURTHER INFORMATION CONTACT: For further information contact Jenni Wallace at (301) 713—0174 ext. 183, or by e-mail at *Jenni.Wallace@noaa.gov*.

SUPPLEMENTARY INFORMATION: On January 19, 2010, the NOAA Great Lakes Habitat Restoration Program Project Grants announced its solicitation for applications under the Great Lakes Restoration Initiative in the NOAA Notice of Availability of Grant Funds for Fiscal Year 2010, published in the **Federal Register** (75 FR 3101). That announcement listed an incorrect deadline for postmarking or receipt by delivery service of hard copy mailings. The correct deadline for postmarking or receipt by delivery service of a hard copy application is 11:59 p.m. EST on February 16, 2010. The deadline for electronic submissions remains unchanged and continues to be 11:59 p.m. EST on February 16, 2010.

All other information and requirements as published in the January 19, 2010 notice remain unchanged.

Intergovernmental review: Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html*

Limitation of liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce pre-award notification requirements for grants and cooperative agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: February 4, 2010.

Tammy L. Journet,

Deputy Director, Acquisition and Grants Office, Contracting Officer, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–2805 Filed 2–8–10; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 100114022–0024–01]

Manufacturing Extension Partnership (MEP) Availability of Funds for Three Regions Including the State of Arizona, Chicago Region of the State of Illinois and the Identified Counties in Central Pennsylvania

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology invites proposals from qualified organizations for funding projects that provide manufacturing extension services to primarily small- and medium-sized manufacturers in the United States. These projects will establish manufacturing extension centers under

the Manufacturing Extension Partnership Program. Proposals are invited for the establishment or continuation of manufacturing extension service within three discrete geographic areas located in Illinois, Arizona and Central Pennsylvania. The three areas are detailed further in the section entitled **SUPPLEMENTARY INFORMATION.**

DATES: All applications must be received or postmarked no later than 5 p.m. Eastern Time on April 12, 2010. Late proposals will not be reviewed.

ADDRESSES: Hard copy submissions should be sent to: National Institute of Standards and Technology, Manufacturing Extension Partnership, c/o Diane Henderson, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800. Electronic submissions should be uploaded to *http://www.Grants.gov.*

FOR FURTHER INFORMATION CONTACT: A paper copy of the **Federal Register** Notice (FRN) may be obtained by calling (301) 975–6328. Administrative, budget, cost-sharing, and eligibility questions should be addressed to Diane Henderson at Tel: (301) 975–5105; E-mail: *diane.henderson@nist.gov;* Fax: (301) 963–6556. Project evaluation criteria and other programmatic questions should be addressed to Alex Folk at Tel: (301) 975–8089; E-mail: *alex.folk@nist.gov;* Fax: (301) 963–6556. Grants Administration questions should be addressed to: Grants and Agreements Management Division; National Institute of Standards and Technology; 100 Bureau Drive, Stop 1650; Gaithersburg, MD 20899–1650; Tel: (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov* or call 800–518–4726. All questions and responses will be posted on the MEP Web site, *http://www.mep.nist.gov.*

SUPPLEMENTARY INFORMATION: *Electronic access:* Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) announcement available at *http://www.Grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically.

Authority: 15 U.S.C. 278k, as implemented in 15 CFR Part 290.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.611.

Program Description: The National Institute of Standards and Technology invites proposals from qualified organizations for funding projects that provide manufacturing extension services to primarily small- and medium-sized manufacturers in the United States. These projects will establish manufacturing extension centers under the Manufacturing Extension Partnership Program. Proposals are invited for the establishment or expansion of manufacturing extension service within three discrete geographic areas located in Illinois, Arizona and Central Pennsylvania. The three areas are further detailed below:

- Chicago Region of Illinois—The region includes: McHenry, Kane, DuPage, Cooke, Chicago, Will and Lake counties.
- Arizona—The region includes the entire state of Arizona.
- Central Pennsylvania—The region includes: Bedford, Blair, Centre, Clinton, Huntingdon, Juniata, Lycoming, Mifflin, Montour, Northumberland, Snyder, and Union counties.

The objective of the projects funded under this program is to provide manufacturing extension services to primarily small- and medium-sized manufacturers in the United States. These services are provided through the coordinated efforts of a regionally-based manufacturing extension center and local technology resources. The management and operational structure of the manufacturing extension center is not prescribed, but should be based upon the characteristics of the manufacturers in the regional and locally available resources with demonstrated experience working with manufacturers. The proposal should include plans for integration into the MEP national system and linkages to appropriate national resources. It is not the intent of this program that the centers perform research and development. Please see full program description in the FFO announcement.

Funding Availability: NIST anticipates that up to $3,875,000 in cooperative agreements will be available to support manufacturing extension centers under this announcement. The funding level for individual awards is not prescribed. NIST anticipates funding 3 awards at the level of up to $1,000,000 for the state of Arizona, up to $2,500,000 for the Chicago region of Illinois and up to $375,000 for the Central Pennsylvania region. The projects awarded under this program will have a budget and performance period of one year. Each project may be renewed on an annual basis subject to the review requirements described in 15 CFR 290.8. Renewal of each award shall be at the sole discretion of NIST and shall be based upon satisfactory performance, priority of the need for the service, existing legislative authority, and availability of funds. Projects are expected to start within 30 days of award notice.

Cost Share Requirements: A non-federal cost share contribution from the applicant is required. At a minimum, the applicant must provide per the following table cost share towards the total capital, operating and maintenance costs for the center.

Year of center operation	Maximum NIST share
1–3	½
4	⅖
5 and beyond	⅓

The applicant's share of the center expenses may include cash and in-kind contributions. However, at least 50% of the applicant's total cost share (cash plus in-kind) must be in cash. Applicants are encouraged to propose more than the minimum cost share. The source and detailed rationale of the cost share, both cash and in-kind, must be documented in the budget submitted with the proposal and will be considered as part of the evaluation review.

Eligibility: Each Award recipient must be a U.S.-based not-for-profit institution or organization. For the purpose of this solicitation, not-for-profit organizations include universities and state and local governments. Eligible applicants may be consortia of non-profit institutions. Existing and previous centers and partners are eligible as well as organizations without prior experience in the MEP program.

Application Requirements: Applications must be submitted in accordance with the requirements set forth in the corresponding FFO announcement.

Evaluation Criteria: All qualified proposals will be evaluated based on the applicant's ability to align the program criteria to NIST MEP's Next Generation Strategy: Continuous Improvement, Technology Acceleration, Supplier Development, Sustainability and Workforce. The NIST MEP Next Generation Strategy can be found at *http://www.mep.nist.gov.*

Applications from existing or previous MEP manufacturing extension Centers or partners must contain specific information that addresses whether the applicant's past performance with the program is indicative of expected performance under a possible new award and describing how and why performance is expected to be the same or different.

The following criteria will be utilized by an evaluation panel to rate the

proposals. Each proposal should address all four evaluation criteria, which are assigned equal weighting.

(1) *Identification of Target Firms in Proposed Region.* Does the proposal clearly address the entire service region, providing for a large enough population of target firms of small- and medium-sized manufacturers that the applicant understands and can serve, and which is not presently served by an existing Center?

i. *Market Analysis.* Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

ii. *Geographical Location.* Physical size, concentration of industry, and economic significance of the service region's manufacturing base. Geographical diversity of the Center as compared to existing Centers will be a factor in evaluation of proposals.

(2) *Technology Resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of technology to develop and transfer technologies related to NIST research results and expertise in the technical areas noted in the MEP regulations found at 15 CFR Part 290 as well as from other sources of technology research and development?

(3) *Technology Delivery Mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small- and medium-sized manufacturers and mechanism(s) for accelerating the adoption of technologies for both process improvement and new product adoption?

i. *Linkages.* Development of effective partnerships or linkages to third parties such as industry, universities, nonprofit economic organizations, and state governments who will amplify the Center's technology delivery to reach a large number of clients in its service region.

ii. *Program Leverage.* Provision of an effective strategy to amplify the Center's technology delivery approaches to achieve the proposed objectives as described in 15 CFR 290.3(e).

(4) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective Center?

i. *Organizational Structure.* Completeness and appropriateness of the organizational structure, and its focus on the mission of the Center. Assurance of local full-time top management of the Center. This includes a clearly presented Oversight Board structure with a membership representing small- and medium-sized manufacturers in the region. MEP has determined that centers clearly benefit when a majority or more of its Board members/Trustees compose a membership representing principally small and medium manufacturing as well as committed partners and do not have dual obligations to more than one Center. Two-thirds of the members of the Center's oversight board must not be members of any other MEP Center boards.

ii. *Program Management.* Effectiveness of the planned methodology of program management. This includes committed local partners and demonstrated experience of the leadership team in manufacturing, outreach and partnership development.

iii. *Internal Evaluation.* Effectiveness of the planned continuous internal evaluation of program activities. The proposal must provide the methodology for continuous internal evaluation of the program activities and demonstrate the effectiveness of defined methodology.

iv. *Plans for Financial Cost Share.* Demonstrated stability and duration of the applicant's funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of the sources of cost share and the general terms of funding commitments. The total level of cost share and detailed rationale of the cost share, both cash and in-kind, must be documented in the budget submitted with the proposal and will be considered as part of the evaluation review. Applicants proposing more than the minimum required cost share will be assessed more favorably in proportion to any increased cost share amount.

v. *Budget.* Suitability and focus of the applicant's detailed one-year budget and budget outline for years 2–5 and beyond.

Review and Selection Process: Proposal evaluation and selection will consist of four principal phases: Proposal qualification, proposal review, site visits and award determination.

a. Proposal Qualification

NIST will review all proposals to assure compliance with the proposal content as described in 15 CFR 290.5 and the provisions of this notice. Proposals that satisfy these requirements will be designated as qualified proposals. Non-qualified proposals will not be evaluated and applicants will be notified of disqualification.

b. Proposal Review

NIST will appoint an evaluation panel, consisting of at least one non-Federal Government employee and at least two Federal Government employees, to conduct independent and objective reviews and evaluations of all qualified proposals in accordance with the evaluation criteria set forth in this notice. Based upon this review, the each reviewer will assign a numeric score for each qualified proposal based on the evaluation criteria. The reviewers may discuss the proposal with each other, but scores will be determined on an individual basis, not as a consensus. Proposals with an average score of 70 or higher out of 100 will be deemed finalists and will receive site visits.

c. Site Visits

NIST representatives (the same evaluation panel reviewers) will visit each finalist organization. Finalists will be reviewed and numeric scores adjusted using the criteria set forth in § 290.6 of these procedures assigning equal weight to each of the four categories. NIST may enter into negotiations with the finalists concerning any aspect of their proposal.

Proposals are then ranked based on the sum of the reviewers' final numeric scores. The ranked proposals are then submitted to the Selecting Official, the Director of the NIST MEP Program.

d. Award Determination

The Director of the NIST MEP Program shall make funding recommendations to NIST Grants Officer based on the rank order of applicants and the following selection factors: Availability of Federal funds, the need to assure appropriate regional distribution, and whether the project duplicates other projects funded by the Department of Commerce or other Federal agencies.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. As a result of the selection process, NIST may fund all, some, or parts of the eligible applications submitted, or none at all. The decision of the Grants Officer is final.

Unsuccessful applicants will be notified in writing. The Program will retain one copy of each unsuccessful application for three years for record keeping purposes. The remaining copies will be destroyed.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of February 11, 2008 (73 FR 7696), are applicable to this notice. Please refer to *http://www.gpoaccess.gov/fr/.*

Dun and Bradstreet Data Universal Numbering System: On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS number MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. MEP program-specific application requirements have been approved by OMB under Control Number 0693–0056.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Funding Availability and Limitation of Liability: The funding periods and funding amounts referenced in this notice and request for proposals are subject to the availability of funds, as well as to Department of Commerce and NIST priorities at the time of award. The Department of Commerce and NIST will not be held responsible for proposal preparation costs. Publication of this notice does not obligate the Department of Commerce or NIST to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

Executive Order 12866: This funding notice was determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553 (a)). Because notice and comment are not required under 5 U.S.C 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C.553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: February 4, 2010.

Marc G. Stanley,

Acting Deputy Directo.

[FR Doc. 2010–2799 Filed 2–8–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Advisory Board for Employer Support of the Guard and Reserve; Defense Advisory Board for Employer Partnership; Charter Revision

AGENCY: Department of Defense (DoD).

ACTION: Federal advisory committee charter.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it intends to revise the charter for the Defense Advisory Board for Employer Support of the Guard and Reserve. Specifically, the Department is: changing the name of the committee from the Defense Advisory Board for Employer Support of the Guard and Reserve to the Defense Advisory Board for Employer Partnership; changing the charter's Objective and Scope from examining matters arising from the military service obligations of members of the National Guard and Reserve and the impact on their civilian employment to providing independent advice and recommendations concerning the impact of military service as it applies to civilian employers; and changing the Agency or Official to Whom the Committee Reports to include the Under Secretary of Defense (Personnel and Readiness).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Committee Management Office, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Defense Advisory Board for Employer Partnership, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense through the Under Secretary of Defense (Personnel and Readiness) and the Assistant Secretary of Defense (Reserve Affairs), with independent advice and recommendations concerning the impact of military service as it applies to civilian employers.

Pursuant to DoD policy, the Under Secretary of Defense (Personnel and Readiness) and Assistant Secretary of Defense (Reserve Affairs) is authorized to act upon the Board's advice and recommendations.

The Board shall be comprised of no more than 15 members appointed by the Secretary of Defense.

Board members shall be appointed by the Secretary of Defense and their appointments shall be renewed on an annual basis. Members who are not full-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C 3109, and serve as Special Government Employees.

Board members, with approval of the Secretary of Defense, may serve a term of three years on the Board; however, no Board member may serve more than six years on the Board.

The Board shall have two Co-Chairpersons. One Co-Chairperson shall be the National Chair of the Employer Support of the Guard and Reserve. This ex-officio appointment shall have the same voting rights as the other Board members. The second Co-Chairperson shall be appointed by the Assistant Secretary of Defense (Reserve Affairs) from the Board membership at large. To ensure continuity, the terms of the Co-

Chairpersons shall expire during alternating years.

With the exception of travel and per diem for official travel, Board members shall serve without compensation.

The Board shall meet at the call of the Designated Federal Officer, in consultation with the Chairperson and the Board's Co-Chairpersons. The estimated number of Board meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not members of the parent committee, shall be appointed in the same manner as the Board members.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Advisory Board for Employer Partnership membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Defense Advisory Board for Employer Partnership.

All written statements shall be submitted to the Designated Federal Officer for the Defense Advisory Board for Employer Partnership, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Advisory Board for Employer Partnership. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: February 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2752 Filed 2–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prohibits or in effect prevents military recruiter access to the campus, students on campus or student directory information. It also implements the requirements set forth in section 983 of title 10, United States Code, and 32 CFR part 216. The institutions of higher education so identified are: Vermont Law School, South Royalton, Vermont; and William Mitchell College of Law, St. Paul, Minnesota.

ADDRESSES: Director for Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Rose Jourdan, (703) 695–5529.

Dated: February 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2753 Filed 2–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; DoD Board of Actuaries; Meeting

AGENCY: Department of Defense (DoD).

ACTION: Meeting notice.

SUMMARY: Under the provision of the Federal Advisory Committee Act of 1972 (5 U.S.C., appendix as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b as amended), and 41 CFR 102–3.150, the Department of Defense announces that the DoD Board of Actuaries will meet on July 22 and 23, 2010. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held on July 22, 2010 (from 1 p.m. to 5 p.m.) and on July 23, 2010 (from 10 a.m. to 1 p.m.).

ADDRESSES: The meeting will be held at 4040 N. Fairfax Drive, Suite 250, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203; phone 703–696–7413.

SUPPLEMENTARY INFORMATION:

Agenda

During this meeting the Board will: review DoD actuarial methods and assumptions to be used in the valuations of the Education Benefits Fund, the Military Retirement Fund, and the Voluntary Separation Incentive Fund, in accordance with the provisions of section 183, section 2006, chapter 74 (10 U.S.C. 1464 *et seq.*), and section 1175 of title 10,

July 22, 1 p.m. to 5 p.m.—Education Benefits Fund

1. Briefing on Investment Experience
2. Developments in Education Benefits
3. Economic Assumptions*
4. September 30, 2009, Valuation and Proposed Per Capita and Amortization Costs Reserve Programs*
5. September 30, 2009, Valuation and Proposed Per Capita and Amortization Costs Active Duty Programs*

July 23, 10 a.m.–1 p.m.—Military Retirement Fund

1. Briefing on Investment experience
2. September 30, 2009, valuation of the military retirement system*
3. Methods and assumptions for September 30, 2010, valuation*
4. Voluntary Separation Incentive (VSI) Fund
5. Recent and proposed legislation

* *Board approval required.*

Written Statements/Oral Presentations

Persons desiring to make an oral presentation or submit a written statement for consideration at the meeting must notify Inger Pettygrove (*see* **FOR FURTHER INFORMATION CONTACT**) by June 24, 2010.

Public Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first come basis.

Persons desiring to attend the meeting must notify Inger Pettygrove (*see* **FOR FURTHER INFORMATION CONTACT**) by June 24, 2010.

Dated: February 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2750 Filed 2–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; DoD Medicare-Eligible Retiree Health Care Board of Actuaries

AGENCY: Department of Defense (DoD).

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the DoD Medicare-Eligible Retiree Health Care Board of Actuaries will meet on August 18, 2010. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held on August 18, 2010, from 1 to 5 p.m.

ADDRESSES: The meeting will be held at 4040 N. Fairfax Drive, Suite 250, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Margot Kaplan at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203; phone 703–696–7404.

SUPPLEMENTARY INFORMATION:

Purpose

During the meeting the Board will execute the provisions of chapter 56, title 10, United States Code (10 U.S.C. 1114 *et seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda

—Meeting objective (Board)

Approve actuarial assumptions and methods needed for calculating:

a. FY 2012 per capita full-time and part-time normal cost amounts

b. September 30, 2009 unfunded liability (UFL)

c. October 1, 2010 Treasury UFL amortization payment and normal cost payment

—Trust Fund Update (DFAS)

—Medicare-Eligible Retiree Health Care Fund Update (TRICARE Management Activity)

—September 30, 2008 Actuarial Valuation Results (DoD Office of the Actuary)

—September 30, 2009 Actuarial Valuation (DoD Office of the Actuary)

—Decisions (Board)

Approve actuarial assumptions and methods needed for calculating:

a. FY 2012 per-capita full-time and part-time normal cost amounts

b. September 30, 2009 UFL

c. October 1, 2010, Treasury UFL amortization payment and normal cost payment

Oral Presentations/Written Statements

Persons desiring to make an oral presentation or submit a written statement for consideration at the meeting must notify Margot Kaplan (*see* **FOR FURTHER INFORMATION CONTACT**) by July 21, 2010.

Public Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Persons desiring to attend the meeting must notify Margot Kaplan (*see* **FOR FURTHER INFORMATION CONTACT**) by July 21, 2010.

Dated: February 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–2751 Filed 2–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Information on Surplus Land at a Military Installation Designated for Disposal: Newport Naval Complex, Newport, RI—Former Naval Hospital, Newport, Former Navy Lodge, Middletown, Tank Farms 1 & 2, Portsmouth, and Midway/Green Lane Parcel, Stringham Road and Portion of Defense Highway

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This notice provides information on the surplus property at Newport Naval Complex, Newport, RI.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Kesler, Director, Base Realignment and Closure Program Management Office, 1455 Frazee Road, San Diego, CA 92108–4310, telephone 619–532–0993 or Mr. Gregory Preston, Deputy Director, Base Realignment and Closure Program Management Office, Northeast, 4911 South Broad Street, Philadelphia, PA 19112–1303, telephone 215–897–4910.

SUPPLEMENTARY INFORMATION: In 2005, portions of Newport Naval Complex, Newport, RI were designated for realignment under the authority of the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the Act). Pursuant to this designation, on January 5, 2009, land and facilities at this installation were declared excess to the Department of Navy (Navy) and available to other Department of Defense components and other Federal agencies. The Navy has evaluated all timely Federal requests and has made a decision on property required by the Federal Government.

Notice of Surplus Property. Pursuant to paragraph (7)(B) of Section 2905(b) of the Act, as amended by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the following information regarding the redevelopment authority for surplus property at Newport Naval Complex, Newport, RI is published in the **Federal Register.**

Surplus Property Description. The following is a list of the land and facilities at Newport Naval Complex: Former Naval Hospital, Newport, Former Navy Lodge, Middletown, Tank Farms 1 & 2, Portsmouth, and Midway/Green Lane Parcel, Stringham Road and Portion of Defense Highway, that are surplus to the needs of the Federal Government.

Former Naval Hospital Area, Newport, RI

a. Land. Newport Naval Complex—Former Naval Hospital Area is located at the Naval Health Care New England, at the south end of the Newport Naval Complex at 43 Smith Road, located within the County of Newport and the City of Newport, RI. The property consists of approximately 10 acres of improved and unimproved fee-simple land, consisting of 7 acres of land and 3 acres of submerged land. The property is located in a coastal zone. In general, the area will be available in September 2012.

b. Buildings. The following is a summary of the buildings and other improvements located on the above-described former Naval Hospital, Newport land that will also be available in September 2012. The property is in a National Register Eligible District. Four of the buildings have been determined to be contributing elements. Property numbers are available on request.

(1) Former Main Hospital—Building No. 1 (1 structure). Comments: Approximately 147,566 square feet. Building No. 1 is a three-story concrete and brick H-plan structure, which was constructed in 1913 and used as an inpatient hospital until 1997; the building is currently vacant.

(2) Administrative facilities (2 structures). Comments: Approximately 37,671 square feet.

(3) Storage/Warehouse, Utility Maintenance Facilities (4 structures). Comments: Approximately 5,839 square feet.

(4) Miscellaneous Facilities (2 structures). Comments: Chapel, Approximately 3000 square feet. Garage, 420 square feet.

(5) Pier. Comments: Approximately 490 square yards.

(6) Paved areas (roads). Comments: Consists of roads and other similar pavements, and other surface areas (*i.e.* parking areas, sidewalks, etc).

(7) Utility facilities (approximately 2 structures). Comments: Measuring systems vary; electric and water.

Former Navy Lodge, Middletown, RI

a. Land. Newport Naval Complex—Former Navy Lodge is located on West Main Road, State Route 114, in a commercial district within the County of Newport and the Town of Middletown and consists of approximately 3 acres of improved and unimproved fee simple land. In general, the area will be available in October 2011.

b. Improvements. The former lodge has been demolished. A small utility (telephone) hut will remain on the property under an easement. The following improvements, located on the above-described Former Navy Lodge land, will also be available in October 2011:

(1) Utility facilities (approximately 2 structures). Comments: Measuring systems vary; water and electric.

Tank Farms 1 and 2, Portsmouth, RI

Tank Farms 1 and 2 consist of improved and unimproved fee simple land located within Newport County and the Town of Portsmouth. In general, the areas will be available in December 2014. Tank Farms 3 and 4 have been withdrawn from consideration as excess, and Navy is retaining these properties for possible alternative energy development.

The Tank Farms were used to store Navy Special, a heavy grade fuel. Tank Farms 1 and 2 were formerly used by the Defense Logistics Agency/Defense Energy Support Center (DESC) for operation of a fuel distribution terminal known as the Defense Fuel Support Point Melville. The available property consists of the following:

Tank Farm 1:

a. Land. Approximately 49 acres of improved and unimproved fee simple land.

b. Improvements. The following improvements, located on the above-described Tank Farm 1 land, will also be available in December 2014:

(1) Miscellaneous Facilities (14 structures). Comments: 2 Partially buried concrete underground fuel storage tanks (2.56 million-gallon capacity), 6 steel underground fuel storage tanks (1.176 million-gallon capacity), 2 above-ground steel fuel storage tanks (2.35 million-gallon capacity), 1 underground water tank (1 million-gallon capacity), and 3 support facilities (22,738 square feet).

(2) Paved areas (roads). Comments: Consists of roads and other similar pavements.

(3) Utility facilities (approximately 2 structures). Comments: Measuring systems vary; water and electric.

Tank Farm 2:

a. Land. Approximately 96 acres of improved and unimproved fee simple land.

b. Improvements. The following improvements, located on the above-described Tank Farm 2 land, will also be available in December 2014:

(1) Miscellaneous Facilities (14 structures). Comments: 11 Concrete underground fuel storage tanks (2.5 million-gallon capacity), and 3 support facilities (6,308 square feet).

(2) Paved areas (roads). Comments: Consists of roads and other similar pavements.

(3) Utility facilities (approximately 2 structures). Comments: Measuring systems vary; water and electric.

Midway/Green Lane Parcel, Stringham Road and Portion of Defense Highway

a. Land. The available property consists of the following parcels. In general, the areas will be available in September 2012.

Midway/Green Lane Parcel consists of approximately 15 acres of improved and unimproved fee simple land located adjacent to the railroad right-of-way, along Narragansett Bay within Newport County and the Town of Middletown.

Stringham Road consists of approximately 1-mile long, 2-lane asphalt roadway located within Newport County and the Town of Portsmouth.

Portion of Defense Highway consists of approximately 3.6 miles long, 2-lane asphalt roadway and bike lanes located within Newport County and the Town of Portsmouth.

Disposal Procedures. At such time as a Local Redevelopment Authority (LRA) is recognized in accordance with Section 2905(b)(7)(B) of the Act, the Department of Defense will publish in the **Federal Register** and in a newspaper of general circulation in the communities in the vicinity of the installation information on the LRA. Pursuant to section 2905(b)(7)(F) of the Act, the LRA will conduct a community outreach effort with respect to the surplus property and will publish, in a newspaper of general circulation in the communities within the vicinity of Newport Naval Complex, Newport, RI the time period during which the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties. That publication shall include the name, address and telephone number of the point of contact for the LRA who can provide information on the prescribed form and contents of the notices of interest.

Dated: February 1, 2010.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–2745 Filed 2–8–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Navy proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on March 11, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Brown-Lam (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the contact under **FOR FURTHER INFORMATION CONTACT**.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM01500–9

SYSTEM NAME:

Integrated Learning Environment (ILE) Classes (September 19, 2005; 70 FR 54909).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, home address, telephone numbers, Social Security Number (SSN), date of birth, unique personal identifier number assigned to individual, pay plan/grade, rank, occupation, Unit Identification Code (UIC), military status, individualized training plan, and course progress of individuals who register to take classes offered under Navy eLearning."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5042, Headquarters, Marine Corps; 14 U.S.C. 93, Commandant, U.S. Coast Guard General Powers; and E.O. 9397 (SSN), as amended."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Disposition is pending. Until the National Archives and Records Administration approve a retention and disposal schedule, records will be treated as permanent."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Commander, Program Executive Office for Enterprise Information Systems (PEO–EIS), 2451 Crystal Drive, Suite 1139, Arlington, VA 22202–4804."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individual seeking to determine whether information about themselves is contained in this system should address written inquires to the Commander, Program Executive Office for Enterprise Information Systems (PEO–EIS) (ATTN: PMW–240 Program Manager), 2451 Crystal Drive, Suite 1139, Arlington, VA 22202–4804.

The system manager will require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

Requests should contain full name, address, Social Security Number (SSN) and be signed."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Program Executive Office for Enterprise Information Systems (PEO–EIS) (ATTN: PMW–240 Program Manager), 2451 Crystal Drive, Suite 1139, Arlington, VA 22202–4804.

The system manager will require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

Requests should contain full name, address, Social Security Number (SSN) and be signed."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is obtained from Individual; Navy eLearning; schools and educational institutions; Navy Personnel Command; and Naval Education and Training Command."

* * * * *

NM01500–9

SYSTEM NAME:

Integrated Learning Environment (ILE) Classes.

SYSTEM LOCATION:

Naval Education Training Professional Development Technology Center (NETPDTC), Saufley Field, FL 32509–5337.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All uniformed service members, civilian, and contractor personnel having a valid Common Access Card (CAC) or Military ID Card; dependent family members of Navy, Marine Corps and Coast Guard military members (Active Duty and Reserve); and Non-Appropriated Fund personnel who are granted limited access for job performance requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home address, telephone numbers, Social Security Number (SSN), date of birth, unique personal identifier number assigned to individual, pay plan/grade, rank, occupation, Unit Identification Code (UIC), military status, individualized training plan, and course progress of individuals who register to take classes offered under Navy eLearning.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5042, Headquarters, Marine Corps; 14 U.S.C. 93, Commandant, U.S. Coast Guard General Powers; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The purpose of this system is to identify individuals who enroll and take computerized training courses offered through the Navy's Integrated Learning Environment (ILE). Each user will be able to create an individualized training plan, complete Web-based training courses and track their course progress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on electronic storage media.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number (SSN) and date of birth.

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized authenticated personnel only. Records are maintained in controlled access rooms or areas. Data is limited to personnel training information. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers.

RETENTION AND DISPOSAL:

Disposition is pending. Until the National Archives and Records Administration approve a retention and disposal schedule, records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Program Executive Office for Enterprise Information Systems (PEO–EIS), 2451 Crystal Drive, Suite 1139, Arlington, VA 22202–4804.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquires to the Commander, Program Executive Office for Enterprise Information Systems (PEO–EIS) (ATTN: PMW–240 Program Manager), 2451 Crystal Drive, Suite 1139, Arlington, VA 22202–4804.

The system manager will require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

Requests should contain full name, address, Social Security Number (SSN) and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Program Executive Office for Enterprise Information Systems (PEO–EIS) (ATTN: PMW–240 Program Manager), 2451 Crystal Drive, Suite 1139, Arlington, VA 22202–4804.

The system manager will require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

Requests should contain full name, address, Social Security Number (SSN) and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from individual; Navy eLearning; schools and educational institutions; Navy Personnel Command; and Naval Education and Training Command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–2748 Filed 2–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0003]

Privacy Act of 1974; System of Records

AGENCY: U.S. Marine Corps, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The U.S. Marine Corps is proposing to amend a system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The amendment would change the System ID of the Transportation Capacity Planning Tool (TCPT) from "M11240" to "M112401".

DATES: This proposed action will be effective without further notice on March 11, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific change to the record system being amended is set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

M11240

SYSTEM:

Transportation Capacity Planning Tool (TCPT) (October 26, 2009; 74 FR 54979).

CHANGES TO THE SYSTEM ID:

Delete entry and replace with "M112401".

* * * * *

[FR Doc. 2010–2747 Filed 2–8–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Process for Requesting a Variance From Vegetation Standards for Levees and Floodwalls

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to update its current process for requesting a variance from vegetation standards for levees and floodwalls to reflect organizational changes and incorporate current agency-wide review processes.

DATES: Written comments must be submitted on or before March 11, 2010.

ADDRESSES: You may submit comments, identified by docket number COE–2010–0007 by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: Douglas.J.Wade@usace.army.mil. Include the docket number, COE–2010–0007 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, *Attn:* CECW–CE, Douglas J. Wade, 441 G Street, NW., Washington, DC 20314–1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE–2010–0007. All comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov Web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Douglas J. Wade, Headquarters, Engineering and Construction Community of Practice, Washington, DC at 202–761–4668.

SUPPLEMENTARY INFORMATION: The request process was developed to implement Section 202(g) of the Water Resources Development Act (WRDA) of 1996. Consistent with our regulations for implementing NEPA for our Civil Works programs, we have included a draft Finding of No Significant Impact (FONSI) for review in addition to the draft Environmental Assessment (EA). The draft FONSI is subject to change based on the comments received through this public notice and should not be viewed as predetermining the outcome of this process. Based on the comments received, we may determine that a FONSI is not appropriate and that a full Environmental Impact Statement is required for this action.

To comply with the requirements of the National Environmental Policy Act, a draft environmental assessment (EA) has been prepared. A copy of the draft EA is available at *http://www.regulations.gov* in docket number COE–2010–0007. If you would like to submit comments on the draft EA, you must do so before the end of the comment period specified in the **DATES** section above.

Authority: We are proposing to issue this Policy Guidance Letter under the authority of 33 U.S.C. 701n.

Dated: February 4, 2010.

James C. Dalton,

Chief, Engineering and Construction, Directorate of Civil Works.

Policy Guidance Letter—Variance From Vegetation Standards for Levees and Floodwalls

1. *Purpose.* This policy guidance letter revises the procedures for obtaining variances from U.S. Army Corps of Engineers (USACE) mandatory vegetation-management standards for levees, floodwalls, and appurtenant structures contained in Engineer Technical Letter (ETL) 1110–2–571—*Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures.* All vegetation variances, both new and existing, are required to seek approval through the process described in this policy guidance letter. Subjecting all new and existing variances to this approval process aligns with the Levee Safety Program goals that make public safety a top priority and assures application of consistent and well-documented approaches. This policy guidance letter supersedes the applicable regional variance policy and process contained in Engineer Regulation (ER) 500–1–1 and Engineer Pamphlet (EP) 500–1–1 (including Appendix E), dated 30 September 2001, and will serve as interim guidance until this process is incorporated into an USACE engineer publication.

2. *Applicability.* This policy guidance letter applies to all Headquarters USACE (HQUSACE) elements, Major Subordinate Commands (MSCs), districts, and field operating activities having responsibility for Civil Works projects. Specifically, this policy guidance letter applies to flood damage reduction projects within an USACE program or project authority.

3. *References.*

a. Engineer Regulation (ER) 500–1–1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program, Chapter 5, Rehabilitation and Inspection Program, 30 September 2001.

b. Engineer Pamphlet (EP) 500–1–1, Emergency Employment of Army and Other Resources, Civil Emergency Management Program—Procedures, Chapter 5, The Rehabilitation and Inspection Program, and Appendix E, Regional Variances to Levee Vegetation Standards, 30 September 2001.

c. Engineer Technical Letter (ETL) 1110–2–571, Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams,

and Appurtenant Structures, 10 April 2009.

4. *Background.* The purpose stated in Section 202(g) of the Water Resources Development Act (WRDA) of 1996 is "to provide a coherent and coordinated policy for vegetation management for levees," so as to "address regional variations in levee management and resource needs." In general, the resulting policy set forth in ER 500–1–1, paragraph 5–22, allowed the project sponsor of a levee, in active status, to seek a variance from USACE standards to allow additional vegetation on or near levees when such vegetation would preserve, protect, and/or enhance natural resources and/or protect rights of Native Americans. However, the safety, structural integrity, and functionality of the levee, in addition to accessibility for inspection and flood-fighting purposes, must be retained. This guidance provides a clearly defined process to implement Section 202(g) of WRDA 1996.

5. *Definition of a Levee System.* A levee system consists of one or more segments and associated features which collectively provide flood, storm, or hurricane damage reduction to a defined area. Failure of one feature or segment within a levee system may result in failure of the entire system. Levee systems may consist of embankment sections, floodwall sections, closure structures, pumping stations, interior drainage works, and flood damage reduction channels.

6. *Process.* The process for the request and approval of a vegetation variance consists of the following steps.

a. The project sponsor or district (when appropriate as outlined in paragraph 9.g. of this document) shall submit a Vegetation Variance Request, as described in paragraph 7, to the Commander of the appropriate USACE district. The request shall fully explain the nature of the variance being requested and demonstrate compliance with the following two basic criteria.

(1) The variance must be shown to be necessary, and the only feasible means, to

- preserve, protect, and enhance natural resources, and/or
- protect the rights of Native Americans, pursuant to treaty, statute, or Executive Order.

(2) With regard to levee systems, the variance must assure that

- safety, structural integrity, and functionality are retained, and
- accessibility for maintenance, inspection, monitoring, and flood-fighting are retained. Note that, as used here, the term "retained" refers to the level of functionality and reliability expected under conditions that are fully consistent with the requirements set forth in ETL 1110–2–571 and any other applicable criteria.

b. The district Levee Safety Officer (LSO) shall review the request for completeness and compliance, and recommend to the District Commander acceptance or non-acceptance. All review costs incurred by the district shall be funded by the appropriate account, based on authorization (O&M General, Inspection of Completed Works, or Flood Control and Coastal Emergencies).

c. The District Commander shall accept or reject the request. If accepted, the District Commander shall submit the request package through the MSC LSO to the MSC Commander. The MSC Commander shall either accept or reject the recommended request. If accepted, the MSC Commander shall submit the request to HQUSACE, via the Regional Integration Team (RIT) process, for an Agency Technical Review (ATR).

d. The ATR leader shall concur or non-concur with the variance request and shall include an executive summary, clearly expressing the pertinent rationale. The ATR team may recommend amendments to the request as an alternative to a non-endorsement.

e. The HQUSACE LSO, or the HQUSACE LSO designee, will be the final approving official for the request.

f. The district shall notify the appropriate regional offices of the federal resource agencies when a vegetation variance request has been received.

g. The district shall serve as the main point of contact for coordination with the sponsor during the entire variance request process. If the request is denied at any level (district, MSC, or HQUSACE), the district shall notify the sponsor in writing and include reasons for the denial.

h. All final documentation for the Vegetation Variance Request shall be uploaded by the district to the National Levee Database (NLD).

i. During inspections, levees will be rated for vegetation in accordance with approved variances. The associated vegetation management plan and approved variance shall be added to the levee's operation and maintenance manual as an addendum.

7. *Vegetation Variance Request.* The following shall be submitted under the cover of the checklist in Enclosure 1 in Adobe PDF format for ATR review.

a. The Vegetation Variance Request and Agreement form (see enclosure) with attachments, completed and signed by the sponsor(s) or district (for situations as specified in 9.g.). District counsel should be involved in the drafting. Substantive deviations are not permitted without a specific separate request and approval from HQUSACE.

b. General description of the levee system including system name, project authority, location, and potential human and environmental consequences (brief description of the population at risk, estimated potential economic losses, and identification of any critical public facilities or special environmental considerations).

c. Detailed and annotated plans and section drawings, at an appropriate scale, clearly conveying the following information.

(1) The boundaries of the specific area(s) to which the variance is to apply. The variance should not include areas for which there are reasonable alternatives. For example, a variance will not be granted for an entire alignment when only a portion of the alignment meets the first of the criteria described in paragraph 6.a.(1).

(2) Overall plan view clearly delineating normal and ordinary-high-water marks, project right-of-way, levees, floodwalls, appurtenant structures, vegetation-management zones, and required vegetation-free zones.

(3) Description of proposed deviations from vegetation standards, including planting locations and species. Depict each species at its expected size at maturity.

(4) Details of any structural measures (such as armoring or overbuilt sections) intended to preserve system reliability and resiliency by preventing or mitigating vegetation impacts.

(5) For each typical condition, provide a section drawing, at an appropriate scale, clearly showing both the normal and ordinary-high-water marks, the project right-of-way, levee, floodwall, appurtenant structures, any associated structural modifications, vegetation-management zones, required vegetation-free zones, and all proposed vegetation (by species, shown at mature size)—including the typical extent of the root system at species maturity. Clearly indicate that the proposed plantings do not include noxious or invasive species or involve any improper use of herbicides.

d. Explanation of reasons the proposed changes are necessary to preserve, protect, and enhance natural resources and/or protect the rights of Native Americans pursuant to treaty and statute. Explain what alternatives to a vegetation variance were considered and why the proposed changes were the only feasible means to provide the

benefits to natural resources and/or to protect the rights of Native Americans.

e. An engineering analysis showing that the changes proposed will result in conditions consistent with the criteria in 6.a.(2). Include graphics, text, and information, such as construction materials and standards as needed to clearly support conclusions.

f. The most recent Routine Inspection Report and Periodic Inspection Report completed by the USACE district.

g. Summary of system performance history for any and all significant flood events. Indicate the system's design flood or design water surface elevation, as applicable and, for each event, the year of occurrence, event probability (e.g. 1% flood), flood duration, and description of any flood-fighting challenges, failures, and outcomes.

h. Vegetation maintenance plan.

i. Any National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and any other environmental compliance documentation that the district determines are required in order to conduct the review.

j. Other information, as needed.

k. Primary point of contact (POC) for this request.

8. *Agency Technical Review.* In coordination with the RIT leader and the HQUSACE Levee Safety Program Manager (LSPM), the USACE Risk Management Center shall lead and manage the ATR for each variance request. HQUSACE will fund the ATR. The timeline for the ATR will depend on the complexity of the request, but will not exceed 90 days unless special circumstances warrant additional time.

9. *Special Considerations.* The following points will be considered prior to initiating a variance request.

a. Variances will be considered only for individual levee systems or portions thereof.

b. The vegetation variance request process does not apply to embankment dams and their appurtenant structures, channels, or shore-line or river-bank protection systems such as revetments, sand dunes, and barrier islands.

c. Waterside planting berms are allowed only by approved variance.

d. The burden shall be on the sponsor to provide adequate documentation to facilitate review. Sufficient and appropriate documentation will ensure a timely review. Insufficient packages will be returned for completion.

e. Due to the significant threat to system reliability, ability to flood fight, and observe system response under high water conditions, no vegetation variance involving woody vegetation, as defined in ETL 1110–2–571 shall be granted for the following portions of a levee: The upper third of the river-side (or flood-side) slope, the crown, the land-side (or protected-side) slope, or within 15 feet of the land-side (or protected-side) toe (subject to preexisting right-of-way).

f. The vegetation variance process is not a mechanism to validate conditions that have developed as a result of inadequate operation and maintenance.

g. A district may submit a variance for levee systems currently in the preconstruction, engineering, and design phase (including major rehabilitation projects) on the date when this policy guidance letter is signed. Districts may also apply for variance for USACE operated and maintained levee systems. Funding needed by the district to compile the variance request shall come from the project appropriations. For areas in which ESA considerations exist, the district can apply for a variance in conjunction with planning and design of future rehabilitation under PL 84–99 and associated measures needed to comply with ESA.

h. If implementation of a vegetation variance will modify or alter a federally authorized levee system in the PL 84–99 program, a Section 208.10/408 review will be necessary and the requirements for that review should be coordinated with the vegetation variance request requirements.

10. *Existing Variances or Other Deviations.* Deviation from the national standards, as defined in ETL 1110–2–571, is permitted only through a vegetation variance, approved by the HQUSACE LSO, via the process described herein. All existing vegetation variances, agreements, or other deviations, that are not submitted for an ATR via the process described herein, by 30 September 2010, may no longer be considered valid. On or around this date, each levee system sponsor that had an existing variance, but did not submit that variance for approval will be informed via letter from the district LSO (copy furnished to the MSC and HQUSACE LSO) of the vegetation management standards to be applied to that system.

11. *Environmental Compliance.* The sponsor is responsible for providing all National Environmental Policy Act (NEPA), Endangered Species Act (ESA) Section 7 consultation, and any other environmental compliance documentation required by the district to analyze the request (except for those levees listed in section 9.g. of this document). The documentation must analyze, as alternatives, the effects of the implementation of the proposed variance and the implementation of the national standards. The sponsor must commit to implementation of any measures (such as monitoring, reasonable and prudent alternatives, etc.) needed to comply with ESA before the sponsor may participate, or continue participation, in the Public Law 84–99 program. Further, the sponsor must commit to bearing the cost for implementation of any measures required to comply with ESA. However, USACE ultimately remains responsible for ensuring that ESA and other environmental compliance obligations are met.

12. After vegetation variance request packages are reviewed through this process, results will be posted by the HQUSACE LSPM to the Levee Safety Community of Practice page, on the Technical Excellence Network (TEN) at *https://ten.usace.army.mil.*

13. The point of contact for this guidance is _____ .

2 Encls
1. Checklist.
2. Request Package.

James C. Dalton, P.E.
Chief, Engineering and Construction Directorate of Civil Works.

Enclosure 1—Vegetation Variance Request: Submittal Checklist

VEGETATION VARIANCE REQUEST: SUBMITTAL CHECKLIST

The items checked below are submitted herewith, consistent with the requirements outlined in paragraph 7 (Vegetation Variance Request) of *Policy Guidance Letter—Requesting a Variance From Vegetation Standards for Levees and Floodwalls,* dated _____ .

☐ (a) *Vegetation Variance Request and Agreement,* completed and signed.
☐ (b) General Description of the levee system. (attachment 1)
☐ (c) Drawings. (attachment 2)
☐ (d) Explanation of why the proposed changes are necessary to preserve, protect, and enhance natural resources and/or protect the rights of Native Americans pursuant to treaty and statute. (attachment 3)
☐ (e) An engineering analysis showing that the proposed changes will result in conditions consistent with the criteria in 6.a.(2) of the PGL. (attachment 4)
☐ (f) The most recent Routine Inspection Report and Periodic Inspection Report completed by the USACE district. (attachment 5)
☐ (g) Summary of system performance history for all significant flood events. (attachment 6)
☐ (h) Vegetation Maintenance Plan. (attachment 7)
☐ (i) Any National Environmental Policy Act (NEPA), Endangered Species Act (ESA), or other environmental compliance documentation that the district determines necessary to the review. (attachment 8)
☐ (j) Other information, as needed. (attachment 9)

☐ (k) Primary point of contact (POC) for this request, as follows.

Name: _____

Organization: _____

Telephone: _____

E-Mail: _____

Address: _____

Enclosure 2—Vegetation Variance Request and Agreement

VEGETATION VARIANCE REQUEST AND AGREEMENT

Addressing the Vegetation Standards for (*enter the levee system name and location, as defined in the National Levee Database*).

I. *Purpose.* The purpose of this Agreement is to allow for specific and limited variance from U.S. Army Corps of Engineers vegetation standards, for the levee system named above, provided such variance does not diminish system reliability, and is necessary to preserve, protect, and enhance natural resources, and protect the rights of Native Americans pursuant to treaty and statute.

II. *Authority.* This Agreement is made pursuant to the authority of Public Law 99, 84th Congress (Pub. L. 84–99), (33 U.S.C. 701n) (69 Stat. 186), as regulated by Title 33, Code of Federal Regulations, Sections 203 and 208.10, and as implemented by policy guidance letter, Subject: Policy Guidance Letter—Requesting a Variance From Vegetation Standards for Levees and Floodwalls, dated _____ .

III. *Applicability.* This Agreement is applicable to the portion(s) of the (*insert name of levee system*) described in attachment (*insert number*).

IV. *References.* (*Insert any references that are applicable, including the existing project cooperation agreement. This could include state law, county ordinances, Federal or state court documents, technical manuals, etc. References may be incorporated into this Agreement.*)

V. *Scope.* A detailed description of the conditions proposed under this agreement is provided in attachment(s) (*insert number(s)*).

VI. Actions During and After Emergencies.

A. Definition of Emergency. For the purposes of application of this Agreement, the term "emergency" is defined as any situation in which a levee is threatened with either failure or overtopping.

B. Definition of Flood Fight. For the purposes of application of this Agreement, the term "flood fight" is defined as actions taken immediately before or during a flood to protect human life and reduce flood damages, such as evacuation, emergency sandbagging and diking, and providing assistance to flood victims.

C. Conduct of Flood-Fight Activities. During an emergency, any responsible party engaged in flood-fight activities, to specifically include the U.S. Army Corps of Engineers, the (*list states, cities, or counties as necessary*), and the project sponsor(s) may take whatever actions are necessary to preserve the structural integrity of the levee system addressed by this Agreement. Actions necessary to preserve the structural integrity of the system may include removal of any and all vegetation on or near the levee or floodwall.

D. Rehabilitation. Any levee repairs, modifications, or improvements made as a result of the emergency event shall be in accordance with current USACE vegetation management standards or approved vegetation variance for the levee system.

VII. Obligations of the Signatories of the Agreement.

A. The sponsor shall hold and save the Government free from all damages arising from the construction, operation, maintenance repair, replacement, and rehabilitation of the (*insert name of levee system*), the Hurricane/Shore Protection Project, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

B. The sponsors agree to maintain the levee system in accordance this variance agreement and assume the responsibility for implementing and bearing the costs of any measures that are required for compliance with the Endangered Species Act or any mitigation requirements that result from environmental compliance processes such as the National Environmental Policy Act or required permits.

VIII. Notices.

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, to the address provided.

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties in the manner provided in paragraph C (below).

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered, or, seven calendar days after it is mailed.

IX. Expiration of this Agreement.

(Approval of this agreement may be contingent upon agreement to an expiration mechanism. Use one of the three conditions below to complete this paragraph.)

(This Vegetation Variance is intended to be permanent.)

(This Vegetation Variance shall expire on [insert date].)

(This Vegetation Variance shall expire upon [explain event].)

However, the Corps reserves the right to revoke this agreement if it becomes apparent that it results in conditions that threaten system reliability and public safety.

X. Signatures.

In witness hereof, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the HQUSACE Levee Safety Officer.

Submitted by:

_____

The (name of entity)

(signature)

_____

(full name, typed)

_____

(title, in full)

_____

(date)

(additional sponsor signature blocks may be added if needed—afterward, delete this note)

Reviewed by:

US Army Corps of Engineers, (insert name) District

(signature)

_____

(full name, typed)

Levee Safety Officer

_____

(date)

Accepted by:

US Army Corps of Engineers, (insert name) District

(signature)

_____

(full name, typed)

Commander

_____

(date)

Reviewed by:

US Army Corps of Engineers, (insert name) Division

(signature)

_____

(full name, typed)

Levee Safety Officer

_____

(date)

Accepted by:

US Army Corps of Engineers, (insert name) Division

(signature)

_____

(full name, typed)

Commander

_____

(date)

Endorsed by:

US Army Corps of Engineers, Risk Management Center

☐ As Proposed

☐ As Amended

(signature)

_____

(full name, typed)

Leader, Agency Technical Review Team

_____

(date)

Approved by: The Department of the Army

(signature)

_____

(full name, typed)

Levee Safety Officer, HQUSACE

_____

(date)

XI. Certificate of Authority

CERTIFICATE OF AUTHORITY

I, _____ , do hereby certify that I am the principal legal officer of the (*Name of Public Sponsor*), that (*Name of*

Public Sponsor) is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the (*Name of Public Sponsor*) in connection with this Vegetation Variance Request and Agreement Addressing the Vegetation Standards for (*enter the levee system name and location, as defined in the National Levee Database*) and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91–611 (42 U.S.C. Section 1962d–5b), and that the persons who have executed this Agreement on behalf of (*Name of Public Sponsor*) have acted within their statutory authority.

In Witness Whereof, I have made and executed this certification this ____ day of _____ 20 ____.

_____
(*Name of Counsel for signing entity*)
(*Full Formal title*)

XII. Certification Regarding Lobbying.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

DATED this ____ day of _____, 20 ____

_____
(*Signature of Agreement Signatory*)

_____
(*Typed Name*)

_____
(*Typed Title*)

[FR Doc. 2010–2807 Filed 2–8–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 4, 2010.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Trends in International Mathematics and Science Study (TIMSS: 11) and Progress in International Reading Literacy Study (PIRLS: 11).

Frequency: Annually.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,529.

Burden Hours: 10,706.

Abstract: NCES seeks OMB approval to recruit schools for the full-scale administration of the Trends in International Mathematics and Science Study (TIMSS) 2011 and the Progress in International Reading Literacy Study (PIRLS) 2011, both coordinated by the International Association for the Evaluation of Educational Achievement (IEA). TIMSS is administered every four years in more than 60 countries and provides data for internationally benchmarking U.S. performance in mathematics and science at the fourth- and eighth-grade levels against other countries around the world. PIRLS is administered every five years in more than 50 countries and provides assessment data for internationally benchmarking U.S. performance in fourth-grade reading. NCES has received OMB approval for the international field test for the two studies, March 1–April 15, 2010. The full-scale data collection will be in April–May 2011. NCES will seek approval for the full-scale instruments in the fall of 2010.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4181. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address

ICDocketMgr@ed.gov or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–2783 Filed 2–8–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–361]

Application To Export Electric Energy; Aquilon Power Ltd.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Aquilon Power Ltd. (Aquilon Power) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before March 11, 2010.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Anthony Como (Program Office) 202–586–5935 or Lot Cooke (Program Attorney) 202–586–0503.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On January 11, 2010, DOE received an application from Aquilon Power for authority to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. Aquilon Power does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which Aquilon Power proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. Aquilon Power has requested an electricity export authorization with a 5-year term.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Aquilon Power has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Aquilon Power application to export electric energy to Canada should be clearly marked with Docket No. EA–361. Additional copies are to be filed directly with Mike Neylan, Aquilon Power Ltd., 280 King Street. East, 4th Floor, Toronto, ON, Canada, M5A 1K7 and David M. Perlman and William E. Wolf, Bracewell & Giuliani LLP, 2000 K Street, NW., Suite 500, Washington, DC 20006–1872. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on January 29, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–2840 Filed 2–8–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, March 2, 2010, 8:30 a.m.–5 p.m., and Wednesday, March 3, 2010, 9 a.m. to 12 noon.

ADDRESSES: Bethesda North Hotel and Conference Center; 5701 Marinelli Road, Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT: Katie Perine; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, Independence Avenue, Washington, DC 20585; *Telephone:* (301) 903–6529.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from Office of Science/DOE.
- News from the Office of Basic Energy Sciences.
- Briefing from the Advanced Research Projects Agency—Energy.
- Update from the BESAC Science for Energy Technologies Workshop.
- EFRC Update.
- Energy Innovation Hub Update.
- Graduate Fellowship Program Solicitation.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Perine at 301–903–6594 (fax) or *katie.perine@science.doe.gov* (e-mail). Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW.,

Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on February 4, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–2831 Filed 2–8–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 10, 2010, 5 p.m.

ADDRESSES: Centennial Hills Library, 6711 North Buffalo Drive, Las Vegas, Nevada 89131.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation—History of the Nevada Test Site.
2. Sub-Committee Updates.
   - Industrial Sites Committee
   - Membership Committee
   - Outreach Committee
   - Soils Committee
   - Transportation/Waste Committee
   - Underground Test Area Committee

Public Participation: The EM SSAB, Nevada Test Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm.*

Issued at Washington, DC on February 4, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–2833 Filed 2–8–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–1–000]

Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects; Notice of Alaska Natural Gas Transportation Projects Open Season Pre-Filing Workshop

February 2, 2010.

On February 11, 2010, the Staff of the Federal Energy Regulatory Commission (FERC) will hold a workshop on the procedures and process for holding and commenting on an open season for an Alaska Natural Gas Transportation Project. The Workshop is being held at the Commission's headquarters in Washington.

In 2005, in the above-referenced docket, FERC enacted regulations under the Alaska Natural Gas Pipeline Act which established the procedures for conducting open seasons for the purpose of making binding commitments for the acquisition of capacity on Alaska natural gas transportation projects. TransCanada Alaska Company LLC (TC Alaska) has recently filed its request for approval of its Open Season plan for its Alaska Pipeline Project in Docket No. PF09–11–001. Denali—The Alaska Gas Pipeline LLC has publicly stated that it intends to hold an open season for its project in 2010.

Under FERC's open season regulations, prior to conducting an open season for an Alaskan natural gas transportation project, each project sponsor is required to submit a detailed open season plan to FERC. After receiving the project sponsor's open season plan, FERC will issue a notice requesting public comments on the open season plan and explain the procedure for submitting such comments. Absent unusual circumstances, FERC will act on the open season plan within 60 days its submission by the project sponsor.

Both of these project sponsors have initiated FERC's pre-filing process, which is typically focused on FERC's environmental review of a project. However in this instance, the pre-filing process also includes FERC's review, approval, and oversight of the project sponsors' open season. FERC Staff is holding this Open Season Pre-Filing Workshop to provide interested parties an opportunity to learn about and discuss the procedures and process for commenting upon and holding an open season.

The workshop will be held on February 11, 2010, from 1 p.m. to 4 p.m. (EST) at: Federal Energy Regulatory Commission, 888 1st Street, NE., Room 3M3, Washington, DC 20426.

All interested parties may attend. The agenda for the Open Season Pre-Filing Workshop is attached. There will be no discussion of TC Alaska's filing in Docket No. PF09–11–001, or any other aspect of the proposed Alaska pipeline projects. Rather, the Workshop will focus on the requirements of the Commission's regulations and procedures and process for commenting upon and holding an open season. In order to ensure that questions can be appropriately answered, it is requested that interested parties provide any questions in advance (by February 8, 2010) to Richard Foley at *richard.foley@ferc.gov,* and they will be added to the Agenda without attribution.

The workshop will not be transcribed by the FERC Staff. Telephone participation will be available; by calling:

Conference number: (888) 673–9807.

Participant passcode: 25121.

For security reasons, the passcode will be required to join the call. Restrictions may exist when accessing freephone/toll free numbers using a mobile telephone.

For additional information concerning this event, please contact Richard Foley

at (202) 502–8955 or Mary O'Driscoll at (202) 502–8680.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2720 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12740–003]

Jordan Hydroelectric Limited Partnership; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

February 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Original License

b. *Project No.:* P–12740–003

c. *Date filed:* July 13, 2009

d. *Applicant:* Jordan Hydroelectric Limited Partnership

e. *Name of Project:* Flannagan Hydroelectric Project

f. *Location:* On the Pound River, in the Town of Clintwood, in Dickenson County, Virginia. The project would occupy federal land managed by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, TN 37738, (865) 436–0402.

i. *FERC Contact:* John Ramer, (202) 502–8969 or *john.ramer@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would utilize the existing U.S. Army Corps of Engineer's (Corps) Flannagan Dam, intake tower, outlet works, and reservoir and would consist of: (1) Three new turbine generating units located within the existing intake tower having a total installed capacity of 3 megawatts; (2) a new control booth on the intake tower; (3) a new substation near the Corps' existing service bridge; (4) new transmission leads connecting the generating units to Appalachian Power Company's existing transmission line; and (5) appurtenant facilities. The average annual generation is estimated to be 9.5 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2726 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–44–000]

Columbia Gas Transmission, LLC; Notice of Application

February 2, 2010.

Take notice that on January 20, 2010, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, TX 77056, filed with the Commission an application under section 7(b) of the Natural Gas Act (NGA) for authorization to abandon by transfer certain natural gas facilities, located in Pennsylvania and West Virginia, to NiSource Midstream Services, LLC or subsidiaries

(NiSource). Columbia also requests that the Commission find the facilities to be gathering upon the transfer of the facilities and exempt from the Commission jurisdiction pursuant to section 1(b) if the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding the petition should be directed to counsel for Columbia, Fredric J. George, Senior Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273, or via telephone at (304) 357–2359, facsimile number (304) 357–3206, or e-mail *fgeorge@nisource.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: February 23, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2721 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13371–001]

Town of West Stockbridge; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

February 2, 2010.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13371–001.

c. *Dated Filed:* November 30, 2009.

d. *Submitted By:* Town of West Stockbridge.

e. *Name of Project:* Shaker Mill Dam Hydroelectric Project.

f. *Location:* On the Williams River, in Berkshire County, Massachusetts. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Town of West Stockbridge, c/o Tina Skorput Cooper, Chair, Board of Selectman, 21 State Line Rd., P.O. Box 525, West Stockbridge, MA 01266; (413) 232–0300 ext. 319.

i. *FERC Contact:* Michael Watts, *Michael.Watts@ferc.gov,* (202) 502–6123.

j. The Town of West Stockbridge filed its request to use the Traditional Licensing Process on November 30, 2009. The City of Nashua provided public notice of its request on January 15, 2010. In a letter dated February 1, 2010, the Director of the Office of Energy Projects approved the Town of West Stockbridge's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Massachusetts State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the Town of West Stockbridge as the Commission's non-federal representative for carrying out informal

consultation, pursuant to Section 7 of the Endangered Species Act, Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and Section 106 of the National Historic Preservation Act.

m. Town of West Stockbridge filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2727 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 02, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–43–000.
Applicants: Acadia Power Partners, LLC, Entergy Louisiana, LLC.
Description: Acadia Power Partners, LLC et al submits an Application for Authorization under Section 203 of the Federal Power Act and Part 33 etc.
Filed Date: 01/29/2010.
Accession Number: 20100201–0225.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: EC10–44–000.
Applicants: Cresent Ridge, LLC.
Description: Application of Cresent Ridge, LLC.
Filed Date: 02/02/2010.
Accession Number: 20100202–5062.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 23, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4257–014.
Applicants: Mid-Power Service Corporation.
Description: Mid-Power Service Corporation submits an amendment to the tariff page that was included in their Amended and Restated Application for authorization to make wholesale sales of energy and capacity at negotiated, market-bases rates.
Filed Date: 02/01/2010.
Accession Number: 20100202–0028.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER99–2984–014.
Applicants: Green Country Energy, LLC.
Description: Green Country Energy, LLC provides revised market-based rate wholesale power sales tariff *et al.*
Filed Date: 02/01/2010.
Accession Number: 20100202–0012.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER01–3103–021.
Applicants: Astoria Energy LLC.
Description: Astoria Energy LLC Submits Order 697 C Report.
Filed Date: 02/02/2010.
Accession Number: 20100202–5083.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 23, 2010.

Docket Numbers: ER03–198–013.
Applicants: Pacific Gas and Electric Company.
Description: Quarterly Report of Site Control for New Generation Capacity Development.
Filed Date: 01/29/2010.
Accession Number: 20100129–5109.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER03–1330–002.
Applicants: EBERSEN, INC.
Description: Ebersen, Inc submits update on market-base rate authority etc.
Filed Date: 02/01/2010.
Accession Number: 20100202–0027.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 16, 2010.

Docket Numbers: ER07–1136–004; ER08–561–002.
Applicants: Benton County Wind Farm LLC; Camp Grove Wind Farm LLC.
Description: Report/Form of Benton County Wind Farm LLC, *et al.*
Filed Date: 01/29/2010.
Accession Number: 20100129–5116.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER07–1213–003; ER08–267–002.
Applicants: Pacific Gas and Electric Company.
Description: Compliance Electric Refund Report re TO10 of Pacific Gas and Electric Company.
Filed Date: 01/29/2010.
Accession Number: 20100129–5242.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER07–1356–014; ER07–1112–012; ER07–1113–012; ER07–1116–011; ER07–1117–014; ER07–1358–013; ER07–1118–013; ER00–2885–028; ER01–2765–027; ER09–609–005; ER09–1141–007; ER05–1232–023; ER02–2102–027; ER03–1283–022.
Applicants: BE Alabama LLC; BE Allegheny LLC; BE CA LLC; BE Ironwood LLC; BE KJ LLC; BE Louisiana LLC; BE Rayle LLC; Cedar Brakes I LLC; Cedar Brakes II, LLC; Central Power & Lime LLC; J.P. Morgan Commodities Canada Corporation; JP Morgan Ventures Energy Corporation; Utility Contract Funding, LLC; Vineland Energy LLC.
Description: Notice of Non-Material Change in Status of J.P. Morgan Ventures Energy Corporation, *et. al.* Pursuant to Order 697–C.
Filed Date: 02/01/2010.
Accession Number: 20100201–5023.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER09–1286–003.
Applicants: Elizabethtown Energy, LLC.
Description: Elizabethtown Energy, LLC submits notice of a non material change in status regarding a change in the upstream ownership structure pursuant to FERC's 8/19/09 Letter Order.
Filed Date: 01/29/2010.
Accession Number: 20100201–0227.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER09–1287–003.
Applicants: Lumberton Energy, LLC.
Description: Lumberton Energy, LLC submits supplement to notice of non-material change in status.
Filed Date: 01/29/2010.
Accession Number: 20100201–0228.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–662–000.
Applicants: CER Generation, LLC.
Description: CER Generation, LLC submits an Application for Order Authorizing Market-Based Rates, Certain Waivers, and Blanket Authorization, FERC Electric Tariff, Original Volume 1.
Filed Date: 01/29/2010.

Accession Number: 20100201–0212.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–669–000.
Applicants: Vermont Yankee Nuclear Power Corporation.
Description: Vermont Yankee Nuclear Power Corporation submits the Billing Methodology which is part of its FERC Electric Rate Schedule, First Revised Volume 12.
Filed Date: 01/28/2010.
Accession Number: 20100129–0209.
Comment Date: 5 p.m. Eastern Time on Thursday, February 18, 2010.

Docket Numbers: ER10–670–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Network Integration Transmission Service Agreement dated 12/22/09 with Sempra Energy Solutions LLC to be designated as First Revised Service Agreement 299 etc.
Filed Date: 01/28/2010.
Accession Number: 20100129–0208.
Comment Date: 5 p.m. Eastern Time on Thursday, February 18, 2010.

Docket Numbers: ER10–671–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Notice of Termination for Service Agreement 581 with Tri State Generation and Transmission Association.
Filed Date: 01/28/2010.
Accession Number: 20100129–0207.
Comment Date: 5 p.m. Eastern Time on Thursday, February 18, 2010.

Docket Numbers: ER10–672–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits a revised, unexecuted service agreement for Network Integration Transmission Service etc.
Filed Date: 01/29/2010.
Accession Number: 20100129–0206.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–673–000.
Applicants: Consolidated Edison Company of New York.
Description: Consolidated Edison Company of New York, Inc submits amendment to Delivery Service Rate Schedule No 96.
Filed Date: 01/29/2010.
Accession Number: 20100129–0203.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–674–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy submits an amendment to the Cost-Based Rate Agreement for full requirements electric service with Kansas Electric Cooperative, Inc.
Filed Date: 01/29/2010.
Accession Number: 20100129–0205.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–675–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits revision to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume 6 to update the Transmission Access Charge Balancing Account Adjustment, effective 4/1/10.
Filed Date: 01/29/2010.
Accession Number: 20100129–0211.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–676–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits revised interconnection service agreement among PJM, Fairless Energy, LLC, et al.
Filed Date: 01/29/2010.
Accession Number: 20100129–0204.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–677–000.
Applicants: Ameren Services Company.
Description: Centrail Illinois Light Company submits Facilities Service Agreement with Rail Splitter Wind Farm, LLC.
Filed Date: 01/29/2010.
Accession Number: 20100129–0215.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–678–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits non substantive clean up revisions to numerous pages of its Open Access Tariff to be effective 3/31/10.
Filed Date: 01/29/2010.
Accession Number: 20100129–0217.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–679–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits revised Network Integration Transmission Service Agreement with Commissions of Public Works of the City of Greenwood etc.
Filed Date: 01/29/2010.
Accession Number: 20100129–0216.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–680–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool submits an executed Large Generator Interconnection Agreement with Southwestern Electric Power Company.
Filed Date: 01/29/2010.
Accession Number: 20100201–0221.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–681–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits amendments to its Open Access transmission Tariff to incorporate interconnection procedures for generating facilities *etc,* to be effective 3/31/10.
Filed Date: 01/29/2010.
Accession Number: 20100201–0222.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–682–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool submits an executed service agreement for the Network Integration Transmission Service with Sunflower Electric Power Corporation.
Filed Date: 01/29/2010.
Accession Number: 20100201–0220.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–683–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits their Power Purchase Agreement with Western Carolina University.
Filed Date: 01/29/2010.
Accession Number: 20100201–0231.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–684–000.
Applicants: New England Power Pool.
Description: New England Power Pool submits the counterpart signature pages of New England Power Pool Agreement with Ameresco CT LLC et al.
Filed Date: 01/29/2010.
Accession Number: 20100201–0218.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–685–000.
Applicants: Midwest Independent System Transmission.
Description: Midwest ISO submits Multi Party Facilities Construction Agreement.
Filed Date: 01/29/2010.
Accession Number: 20100201–0233.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–686–000.
Applicants: Otter Tail Power Company.
Description: Midwest Independent Transmission System Operator, Inc et al

submits revisions to the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 01/29/2010.

Accession Number: 20100202–0207.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–687–000.

Applicants: Midwest Independent System Transmission, ALLETE, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Notice of Succession with respect to certain Transmission Service Agreements *etc.*

Filed Date: 01/29/2010.

Accession Number: 20100202–0214.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–688–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits Operation Maintenance and Replacement Agreement.

Filed Date: 01/29/2010.

Accession Number: 20100202–0209.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–689–000.

Applicants: Virginia Electric and Power Company.

Description: Dominion Virginia Power submits an executed Joint Ownership Agreement between Dominion and TrAILCo governing the construction and ownership of new 500kV transmission lines.

Filed Date: 01/29/2010.

Accession Number: 20100202–0208.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–690–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corp submits an Amended and Restated Interconnection Agreement with Erie Boulevard Hydropower, LP.

Filed Date: 01/29/2010.

Accession Number: 20100202–0213.

Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Docket Numbers: ER10–691–000.

Applicants: Duke Energy Indiana, Inc.

Description: Duke Energy Indiana, Inc submits a Memorandum of Understanding with Vectren Energy Delivery of Indiana, Inc.

Filed Date: 02/01/2010.

Accession Number: 20100202–0228.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–692–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with Golden Spread Electric Coop. et al.

Filed Date: 02/01/2010.

Accession Number: 20100202–0227.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–693–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with Kansas Electric Power Coop., Inc et al.

Filed Date: 02/01/2010.

Accession Number: 20100202–0226.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–694–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service between SPP as Transmission Provider and Tex-La Electric Coop. of Texas, Inc etc.

Filed Date: 02/01/2010.

Accession Number: 20100202–0225.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–695–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with the Board of Public Utilities, Springfield, Missouri.

Filed Date: 02/01/2010.

Accession Number: 20100202–0224.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–696–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits unexecuted service agreement for Network Integration Transmission Service with Northeast Texas Electric Cooperative, Inc et al.

Filed Date: 02/01/2010.

Accession Number: 20100202–0223.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–697–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits notice of cancellation of the Point to Point Transmission Service Agreement between SPP and Kansas Municipal Energy Agency to be effective 1/1/2010.

Filed Date: 02/01/2010.

Accession Number: 20100202–0222.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–698–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an unexecuted service agreement for Network Integration Transmission Service with East Texas Electric Cooperative, Inc et al.

Filed Date: 02/01/2010.

Accession Number: 20100202–0221.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–699–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with Kansas Municipal Energy Agency et al.

Filed Date: 02/01/2010.

Accession Number: 20100202–0220.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–700–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits executed Second Revised Agreement for Wholesale Distribution Service Charges between Kansas Electric Power Cooperative, Inc and the Empire District Electric Company.

Filed Date: 02/01/2010.

Accession Number: 20100202–0219.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–701–000.

Applicants: JJR Power LLC.

Description: JJR Power LLC submits notice of cancellation of FERC Tariff, Original Volume No 1 to be effective 2/1/2010.

Filed Date: 02/01/2010.

Accession Number: 20100202–0218.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–702–000.

Applicants: EDF Inc.

Description: EDF Development Inc submits a notice of name change and succession.

Filed Date: 02/01/2010.

Accession Number: 20100202–0230.

Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–703–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnections, LLC submits revisions to Attachment Q, of the PJM Open Access Transmission Tariff etc.

Filed Date: 02/01/2010.
Accession Number: 20100202–0229.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–706–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits amended and restated large generator interconnection agreement.
Filed Date: 02/01/2010.
Accession Number: 20100202–0235.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–707–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits Interchange Service Agreements.
Filed Date: 02/01/2010.
Accession Number: 20100202–0233.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–708–000.
Applicants: American Electric Power Service Corporation.
Description: Kentucky Power Company submits and request acceptance of a first revised Interconnection Agreement 1530 to its FERC Electric Tariff, Sixth Revised Volume 1 with East Kentucky Power Cooperative.
Filed Date: 02/01/2010.
Accession Number: 20100202–0234.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–709–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Co submits the Twenty-Eighth Filing of Facilities Agreements.
Filed Date: 02/01/2010.
Accession Number: 20100202–0242.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Docket Numbers: ER10–710–000.
Applicants: Nevada Power Company.
Description: Nevada Power Company *et al* submit revisions to the Sierra Pacific Resources Operating Companies FERC Electric Third Revised Volume No 1 Open Access Transmission Tariff.
Filed Date: 02/01/2010.
Accession Number: 20100202–0240.
Comment Date: 5 p.m. Eastern Time on Monday, February 22, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA10–6–000; ER03–721–014; TS10–3–000.
Applicants: New Harquahala Generating Company, LLC.
Description: Request for Waivers of New Harquahala Generating Company, LLC.
Filed Date: 01/29/2010.
Accession Number: 20100129–5140.
Comment Date: 5 p.m. Eastern Time on Friday, February 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. 2010–2732 Filed 2–8–10; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–38–000]

Kentucky Municipal Power Agency and Owensboro Municipal Utilities, Complainants v. E.ON U.S. LLC, Respondent; Notice of Complaint

February 2, 2010.

Take notice that on January 29, 2010, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 and section 206 of the Federal Power Act, 16 U.S.C. 824(e), Kentucky Municipal Power Agency and Owensboro Municipal Utilities (Complainants) filed a formal complaint against E.ON U.S. LLC (Respondent) requesting the Commission to either reject the Respondent's proposed tariff change filed on November 20, 2009 in Docket ER10–295–000 or suspend it and set it for hearing, in addition to finding that the Respondent's business practice of rounding loses up, but not down to the next whole MW is unreasonable.

The Complainants state that a copy of the complaint has been served on addressees on the official service list for Docket No. ER10–295. There was no official listed for the Respondent itself on the Commission's list of Corporate Officials. The complaint was served on those listed for its affiliate LG&E Energy Corp.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the

"eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 18, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2722 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PA10–1–000; ER09–555–000; ER05–1065–000]

Entergy Services, Inc.; Notice of Designation of Commission Staff as Non-Decisional

February 2, 2010.

With respect to the October 1, 2009 letter in Docket No. PA10–1–000 notifying Entergy Services, Inc. that the Office of Enforcement and the Office of Electric Reliability of the Federal Energy Regulatory Commission are jointly conducting an audit of Entergy Services, Inc., the staff of the Office of Enforcement is designated as non-decisional in deliberations by the Commission in the above referenced docket numbers, including all subdockets thereto, for purposes of 18 CFR 385.2202 (2009). Mark Hegerle, Olutayo Oyelade, Eric Vandenberg, Juan Villar, and Kevin Wierzbicki of the Office of Electric Reliability, Lawrence Greenfield of the Office of the General Counsel, Thomas Dautel of the Office of Energy Policy and Innovation, and Stephen Pointer of the Office of Energy Market Regulation are also designated as non-decisional in these dockets and subdockets.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2729 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2985–006]

Onyx Specialty Papers, Inc.; Notice of Availability of Draft Environmental Assessment

February 2, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486,52 FR 47897), the Office of Energy Projects has reviewed the application for a subsequent license for the 100-kilowatt Willow Mill Hydroelectric Project, located on the Housatonic River, in the Town of Lee, Berkshire County, Massachusetts, and has prepared an Draft Environmental Assessment (DEA). In the DEA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a subsequent license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments on the DEA should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Willow Mill Project No. 2985–006" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact Kristen Murphy at (202) 502–6236.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2728 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–505–000]

Dynegy Services Plum Point; Notice of Filing

February 2, 2010.

Take notice that, on February 1, 2010, Dynegy Services Plum Point filed to supplement its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2725 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–395–000, ER10–409–000, ER10–410–000]

Covanta Pylmouth Renewable Energy Limited Partnership Covanta Energy Marketing LLC Covanta Power, LLC; Notice of Filing

February 2, 2010.

Take notice that, on February 1, 2010, Covanta Pylmouth Renewable Energy Limited Partnership, Covanta Energy Marketing LLC, and Covanta Power, LLC filed to supplement their filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in these proceedings.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2724 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–290–000]

New York Independent System Operator, Inc.; Notice of Filing

February 2, 2010.

Take notice that on January 26, 2010, New York Independent System Operator, Inc. submitted its response to the Commission's deficiency letter issued on January 6, 2010, *New York Independent System Operator, Inc.,* Deficiency Letter at 2, Docket No. ER10–290–000 (issued January 6, 2010).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2723 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–40–000]

BCR Holdings, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bully Camp Gas Storage Project and Request for Comments on Environmental Issues

February 2, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Bully Camp Gas Storage Project involving construction and operation of facilities by BCR Holdings, Inc. (BCR) in Lafourche Parish, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on March 4, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable

agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice BCR provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

BCR proposes to construct and operate a new natural gas storage facility in a solution-mined salt dome in Lafourche Parish, Louisiana. The Bully Camp Gas Storage Project would provide about 15.0 billion cubic feet (Bcf) of working gas storage and would be integrated into the regional gas transmission system through interconnects with existing interstate and intrastate pipelines. According to BCR, its project would add competitive new storage and hub services to the interstate and intrastate markets. The storage facility would provide its customers with flexibility to manage their gas supply portfolios; ability to meet the immediate demands of peaking facilities (both increases in gas supplies and decreases in market needs); and ability to capture transitory market price spreads.

The Bully Camp Gas Storage Project would consist of the following facilities:

- Two salt storage caverns (each with a working capacity of 7.5 Bcf), wells, and well pads;
- An 18,940-horsepower compressor station;
- Four meter stations and interconnection facilities (for Gulf South Pipeline Company, LP; Discovery Gas Transmission, LLC; Bridgeline Holdings, LP; and Texas Eastern Transmission Corporation);
- Four sections of natural gas pipeline totaling about 6.1 miles (ranging from 10 inches to 20 inches in diameter); and
- Six sections of various diameter water and brine pipeline totaling about 19.5 miles (ranging from 3 inches to 24 inches in diameter).

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 163 acres of land for the aboveground facilities and the pipelines. Following construction, about 29.2 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before March 4, 2010.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "Documents and Filings". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "Documents and Filings" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "Sign up" or "eRegister". You will be asked to select the type of filing you are making. A comment on a particular

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to page 5 of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the Internet at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field (*i.e.,* CP10–40). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–2730 Filed 2–8–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Provo River Project Rate Order No. WAPA–149

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order Concerning a Power Rate Formula.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–149 placing a power rate formula for the Provo River Project (PRP) of Western Area Power Administration (Western) into effect on an interim basis. The provisional power rate formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis, or until the power rate formula is replaced by another power rate formula.

DATES: The provisional power rate formula will be placed into effect on an interim basis on April 1, 2010, and will be in effect until FERC confirms, approves, and places the provisional power rate formula in effect on a final basis for 5 years ending March 31, 2015, or until superseded.

FOR FURTHER INFORMATION CONTACT: Ms. LaVerne Kyriss, Acting CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580, (801) 524–5493, e-mail *kyriss@wapa.gov,* or Mr. Rodney Bailey, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580, (801) 524–4007, e-mail *rbailey@wapa.gov.*

SUPPLEMENTARY INFORMATION: The PRP, which includes Deer Creek Dam on the Provo River in Utah, was authorized in 1935. Construction of the dam began in 1938 and was completed in 1951. The Deer Creek Powerplant was authorized on August 20, 1951, construction began in 1956, and was completed in 1958; generation began that same year. Its maximum operating capacity is 5,300 kilowatts.

The PRP power is marketed according to a marketing plan that was approved and published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the PRP to customers of Utah Municipal Power Agency, Utah Associated Municipal Power Systems, and Heber Light and Power (Customers) in the Provo River drainage area.

Contract Nos. 94–SLC–0253, 94–SLC–0254, and 07–SLC–0601 between the United States and Customers require that the amount of each annual installment be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate fiscal year. Each fiscal year, Western will estimate the Deer Creek Powerplant (DCP) expenses by preparing a power repayment study, which will include estimates of operation, maintenance, and replacement costs for the DCP.

Each annual installment pays the annual amortized portion of the United States' investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest and the associated operation, maintenance, and replacement (OM&R) costs. Since the repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year, the Customers pay all OM&R expenses of the PRP and, in return, receive all of the energy produced by the PRP. Western will continue to provide the Customers a revised annual installment by August 31 of each year using the same methodology.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and

transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00C, 10 CFR 903, and 18 CFR 300, I hereby confirm, approve, and place Rate Order No. WAPA–149 into effect on an interim basis. The renewal of the power rate formula will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: February 1, 2010.

Daniel B. Poneman,

Deputy Secretary.

Order Confirming, Approving, and Placing the Power Rate Formula for the Provo River Project Into Effect on an Interim Basis

This rate was established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the Provo River Project (PRP).

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration.

CRSP: Colorado River Storage Project.

Contracts: Contract No. 94–SLC–0254 with Utah Municipal Power Agency effective December 22, 1994, Contract No. 94–SLC–0253 with Utah Associated Municipal Power System effective January 19, 1995, and Contract No. 07–SLC–0601 with Heber Light and Power effective April 1, 2007. The Contracts are effective through September 30, 2024.

Customers: Utah Associated Municipal Power Systems, Utah Municipal Power Agency, and Heber Light and Power.

DCP: Deer Creek Powerplant.

DOE: Department of Energy.

DOE Order RA 6120.2: A Department of Energy order dealing with power marketing administration financial reporting and ratemaking procedures.

FERC: Federal Energy Regulatory Commission.

FY: Fiscal year; October 1 to September 30.

Heber: Heber Light & Power.

Interior: United States Department of the Interior.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NEPA: National Environmental Policy Act of 1969. (42 U.S.C. 4321, *et seq.*)

OM&R: Operation, Maintenance, and Replacement.

PRP: Provo River Project.

PRS: Power Repayment Study.

PRWUA: Provo River Water Users Association.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

UAMPS: Utah Associated Municipal Power Systems.

UMPA: Utah Municipal Power Agency.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

This power rate formula takes effect on an interim basis beginning April 1, 2010, and will remain in effect pending FERC's approval of this or a substitute power rate formula on a final basis for a 5-year period ending March 31, 2015, or until superseded.[1]

Public Notice and Comment

Paragraph 903.23(a) of 10 CFR 903 for rate extensions does not require either a consultation and comment period, or public information, or comment forums. Western considers this rate order a rate extension since the power rate formula is not changing; rather it is going through the course of a 5-year renewal. This request is for approval of the power rate formula renewal using the present methodology for calculating the annual installment. On April 20, 2009, Western met with the Customers and notified them of Western's intent to renew the present power rate formula. Western also discussed the FY 2010 budget and capital expenditures. The Customers expressed their desire to continue using the power rate formula methodology through letter notifications.

Project Description

Construction of the PRP began in May 1938, and the powerplant was completed in 1958. Presently, it has a generating capacity of 5,300 kW of power. Energy excess to the PRP purposes is marketed under a marketing plan published in the **Federal Register** on November 21, 1994. This marketing plan allows Western to market the output of the PRP to customers of UAMPS, UMPA, and Heber in the Provo River drainage area.

Power Repayment Studies

Each FY, Western will estimate DCP expenses by preparing a PRS that will include estimates of OM&R costs for the DCP for the next FY. The PRS determines if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the PRP power function. Repayment criteria are based on law, policies (including DOE Order RA 6120.2), and authorizing legislation.

Western calculates the annual installment based on 2 years of data. The calculation includes the projected costs of the rate installment year (future FY) and an adjustment from the last historic FY. The adjustment is the surplus or deficit that occurs in the last historic year when actual costs and repayment obligations are compared with actual revenues. This surplus or deficit is combined with the costs for the projected rate installment year to arrive at the annual rate installment. Each annual installment pays the annual amortized portion of the United States' investment in the Deer Creek Dam and Reservoir hydroelectric facilities with interest and the associated OM&R. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year.

Certification of Rates

Western's Administrator certified that the methodology for the provisional power rate formula renewal for the Provo River Project to calculate the annual installment is consistent with sound business principles. The methodology for the provisional power rate formula renewal was developed following administrative policies and applicable laws.

[1] FERC confirmed and approved the present Provo River Project rate on April 25, 2005, for a period through March 31, 2010 (111 FERC ¶ 62089).

Statement of Revenue and Related Expenses

The revenue requirements for the PRP are based on PRS calculations for future requirements, which will be adjusted when FY actuals are known. The following table summarizes revenues and expenses for the current 6-year power rate formula and the actual revenues and expenses for the same period.

PROVO RIVER—COMPARISON OF 6-YEAR TOTAL REVENUES AND REVENUE DISTRIBUTION FY 2004–2009

[$1,000]

Item	Projected [1]	Actual [2]	Change
Total Revenues	1,857	1,532	(325)
Revenues Distribution:			
O&M	1,217	1,510	293
Transmission	179	108	(71)
Interest	165	23	(142)
Investment Repayment	264	316	52
Surplus Revenues	32	(425)	(457)
Total Revenues Distribution	1,857	1,532	(325)

[1] Taken from FY 2003 Final PRS.
[2] Although the rate process seeks approval for a 5-year period, 6 years of data are shown in the above table because FY 2009 is an estimate and is used for the current 2009 rate installment. Actual data is taken from the FY 2008 Final PRS.

The following table provides a summary of the projected revenues and expenses during the provisional power rate formula period.

PROVO RIVER PROJECT 6-YEAR PROJECTIONS TOTAL REVENUES AND REVENUE DISTRIBUTION FY 2010–2015

[$1,000]

	FY 2010–2015 projections
Total Revenues [1]	$1,799
Revenue Distribution:	
O&M	1,799
Interest [2]	0
Investment Repayment [2]	0
Total Revenue Distribution	1,799

[1] Although the rate process seeks approval for a 5-year period (FY 2010–2015), 6 years of data are shown in the above table because FY 2010 is an estimate and is used for the current 2010 rate installment.
[2] All capitalized investments are repaid and none are planned through 2015; therefore, no interest or principal payments are projected.

Basis for Rate Development

Each Customer is billed for electric service calculated every FY, payable in 12 equal monthly payments. Every FY, Western will estimate the PRP expenses by preparing a PRS which will include estimates of OM&R costs for the DCP. The amount of each monthly payment will be established in advance by Western and submitted to the Customers on or before August 31 of the year preceding the appropriate FY.

The calculation of the annual installment and the monthly payments will include adjustments to the revenue requirements estimates. These adjustments deal with the difference between estimated and actual revenue requirements. If the revenue requirements are underestimated, an amount equal to the difference must be added to the next annual installment. Conversely, if revenue requirements are overestimated, the amount would be deducted from the next installment.

In accordance with the Contracts, minor replacements and additions are included in the revenue requirements of the DCP. If major replacements and additions exceeding $5,000 but not greater than $25,000 are needed, the Customers will be given the option of financing their share of the cost or having the cost capitalized and amortized over the life of the replacement or addition. If the Customers select the latter, the costs will be capitalized at the current interest rate prescribed by DOE, under RA 6120.2, Paragraph 11B, "Basic Policy for Rate Adjustment; Interest Rate Formula," in the fiscal year in which the replacement or addition is made. Such costs will be based on prudent and businesslike management practices and following established electric industry operation and maintenance practices. If extraordinary replacements exceeding $25,000 are needed, the Customers will consult with Reclamation, PRWUA, and Western about financing the replacement.

The rate does not depend upon the power and energy made available for sale; instead, the Customers will pay the total PRP's annual powerplant revenue requirements in return for the total marketable PRP production. Each Customer will pay its proportional share of the revenue requirements identified in the PRS in 12 monthly installments.

Availability of Information

Information about this power rate formula renewal is available for public review at the Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, Utah or at *http://www.wapa.gov/crsp/ratescrsp/adjustments.htm* under CRSP rate adjustment documents for the Provo River Project's section.

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to Federal Energy Regulatory Commission

The interim power rate formula renewal herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the above and under the authority delegated to me as the Deputy Secretary of Energy, I confirm and approve on an interim basis, effective April 1, 2010, a renewal of the rate formula for the Provo River Project of the Western Area Power Administration. The power rate formula shall remain in effect on an interim basis, pending FERC's confirmation and approval of it or a substitute rate on a final basis, through March 31, 2015.

Dated: February 1, 2010.

Daniel B. Poneman,

Deputy Secretary.

[FR Doc. 2010–2838 Filed 2–8–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–RCRA–2009–1018; FRL–9110–3]

Lead-Based Paint Renovation, Repair and Painting, and Pre-Renovation Education Activities in Target Housing and Child Occupied Facilities; State of Wisconsin Notice of Self-Certification Program Authorization, Request for Public Comment, Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; program authorization, request for comments and opportunity for public hearing.

SUMMARY: This notice announces that on October 20, 2009, the State of Wisconsin was deemed authorized under section 404(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2684(a), and 40 CFR 745.324(d)(2), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, 15 U.S.C. 2682(c)(3), and a lead-based paint pre-renovation education program in accordance with section 406(b) of TSCA, 15 U.S.C. 2686(b). This notice also announces that EPA is seeking comment during a 45-day public comment period, and is providing an opportunity to request a public hearing within the first 15 days of this comment period, on whether these Wisconsin programs are at least as protective as the federal programs and provide for adequate enforcement. This notice also announces that the authorization of the Wisconsin 402(c)(3) and 406(b) programs, which were deemed authorized by regulation and statute on October 20, 2009, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves one or both of these Wisconsin program applications on or before April 19, 2010.

DATES: Comments, identified by docket control number EPA–R05–RCRA–2009–1018, must be received on or before March 26, 2010. In addition, a public hearing request must be submitted on or before February 24, 2010.

ADDRESSES: Comments, and requests for a public hearing may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Section I of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number EPA–R05–RCRA–2009–1018 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Marlyse Wiebenga, Technical Contact, LCD, Toxics Section, United States Environmental Protection Agency, 77 W. Jackson Blvd., Mail Code LC–8J, Chicago, IL 60604, telephone number: (312) 886–4377; e-mail address: *wiebenga.marlyse@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, to entities offering Lead Safe Renovation courses, and to firms and individuals engaged in renovation and remodeling activities of pre-1978 housing in the State of Wisconsin. Individuals and firms falling under the North American Industrial Classification System (NAICS) codes 231118, 238210, 238220, 238320, 531120, 531210, 53131, *e.g.,* General Building Contractors/Operative Builders, Renovation Firms, Individual Contractors, and Special Trade Contractors like Carpenters, Painters, Drywall workers and Plumbers, "Home Improvement" Contractors, as well as Property Management Firms and some Landlords are also affected by these rules. This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this notice could also be affected. The NAICS codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. Electronically: you may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov/.* To access this document select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

2. In person: you may read this document, and certain other related documents, by visiting the Wisconsin Department of Health Services, 1 West Wilson St., 1st floor, Room 137, Madison, WI, 53703, contact person, Shelley Bruce, phone number (608) 261–6876. You may also read this document, and certain other related documents, by visiting the United States Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL. You should arrange your visit to the EPA office by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Also, EPA has established an

official record for this action under docket control number EPA–R05–RCRA–2009–1018. The official record consists of the documents specifically referenced in this action, this notice, the State of Wisconsin 402(c)(3) and 406(b) program authorization applications, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI).

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number EPA–R05–RCRA–2009–1018 in the subject line on the first page of your response.

1. *By mail:* Submit your comments and hearing requests to: Marlyse Wiebenga, Technical Contact, LCD, Toxics Section, U.S. Environmental Protection Agency, 77 W. Jackson Blvd., Mail Code LC–8J, Chicago, IL 60604.

2. *By person or courier:* Deliver your comments and hearing requests to: U.S. Environmental Protection Agency, LCD, Toxics Section, floor 8 receptionist, 77 W. Jackson Blvd., Chicago, IL 60604. The Regional office is open from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The phone number for the regional office is (312) 886–6003.

3. *Electronically:* You may submit your comments and hearing requests electronically by e-mail to: *wiebenga.marlyse@epa.gov* or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in Microsoft Word or ASCII file format.

D. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark on each page the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM that you mail to EPA as CBI, and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible.
2. Describe any assumptions that you use.
3. Provide copies of any technical information and/or data you use that support your views.
4. If you estimate potential burden or costs, explain how you arrive at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action Is the Agency Taking?

EPA is announcing that on October 20, 2009, the State of Wisconsin was deemed authorized under section 404(a) of TSCA, and 40 CFR 745.324(d)(2), to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and a lead-based paint pre-renovation education program in accordance with section 406(b) of TSCA. This notice also announces that EPA is seeking comment and providing an opportunity to request a public hearing on whether the State programs are at least as protective as the federal programs and provide for adequate enforcement. The 402(c)(3) program ensures that training providers are accredited to teach renovation classes, that individuals performing renovation activities are properly trained and certified as renovators, that firms are certified as renovation firms, and that specific work practices are followed during renovation activities. The 406(b) program ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun. On October 20, 2009, Wisconsin submitted an application under section 404 of TSCA requesting authorization to administer and enforce requirements for a renovation, repair and painting program in accordance with section 402(c)(3) of TSCA, and a pre-renovation education program in accordance with section 406(b) of TSCA, and submitted a self-certification that these programs are at least as protective as the federal programs and provide for adequate enforcement. Therefore, pursuant to section 404(a) of TSCA, and 40 CFR 745.324(d)(2), the Wisconsin renovation program and pre-renovation education program are deemed authorized as of the date of submission and until such time as the Agency disapproves the program application or withdraws program authorization. Pursuant to section 404(b) of TSCA and 40 CFR 745.324(e)(2), EPA is providing notice, opportunity for public comment and opportunity for a public hearing on whether the State program application is at least as protective as the federal programs and provides for adequate enforcement. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time and place of the hearing. The authorization of the Wisconsin 402(c)(3) and 406(b) programs, which were deemed authorized by regulation and statute on October 20, 2009, will continue without further notice unless EPA, based on its own review and/or comments received during the comment period, disapproves one or both of these Wisconsin program applications on or before April 19, 2010.

B. What Is the Agency's Authority for Taking This Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled Lead Exposure Reduction. In the **Federal Register** dated April 22, 2008, (73 FR 21692), EPA promulgated final TSCA section 402(c)(3) regulations governing renovation activities. The regulations require that in order to do renovation activities for compensation, renovators must first be properly trained and certified, must be associated with a certified renovation firm, and must follow specific work practice standards,

including recordkeeping requirements. In addition, the rule prescribes requirements for the training and certification of dust sampling technicians. In the **Federal Register** of June 1, 1998, (63 FR 29908), EPA promulgated final TSCA section 406(b) regulations governing pre-renovation education requirements in target housing. This program ensures that owners and occupants of target housing are provided information concerning potential hazards of lead-based paint exposure before certain renovations are begun on that housing. In addition to providing general information on the health hazards associated with exposure to lead, the lead hazard information pamphlet advises owners and occupants to take appropriate precautions to avoid exposure to lead-contaminated dust and debris that are sometimes generated during renovations. EPA believes that regulation of renovation activities and the distribution of the pamphlet will help to reduce the exposures that cause serious lead poisonings, especially in children under age 6, who are particularly susceptible to the hazards of lead.

Under section 404 of TSCA, a state may seek authorization from EPA to administer and enforce its own pre-renovation education program or renovation, repair and painting program in lieu of the federal program. The regulations governing the authorization of a State program under both sections 402 and 406 of TSCA are codified at 40 CFR part 745, subpart Q. States that choose to apply for program authorization must submit a complete application to the appropriate regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State must demonstrate that its program is at least as protective of human health and the environment as the federal program, and provides for adequate enforcement, as required by section 404(b) of TSCA. EPA's regulations at 40 CFR part 745, subpart Q provide the detailed requirements a state program must meet in order to obtain EPA approval. A state may choose to certify that its own pre-renovation education program or renovation, repair and painting program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program is at least as protective of human health and the environment as the federal program and provides for adequate enforcement. Upon submission of such a certification letter the program is deemed authorized pursuant to TSCA section 404(a) and 40 CFR 745.324(d)(2). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following program summary is from Wisconsin's self-certification application:

Scope of Rules

Chapter DHS 163, Wisconsin Administrative Code, was promulgated by the Department of Health Services (Department) under the authority of ch. 254, Wisconsin Statutes, to ensure that persons who perform lead-based paint activities do so safely to prevent exposure of building occupants, especially children, to hazardous levels of lead. The rule requires a person to be Department-certified before performing, supervising, or offering to perform a lead-based paint activity involving target housing or a child-occupied facility built before 1978. Work practice standards are also prescribed, as well as reporting and recordkeeping requirements. In addition, no person may offer or conduct a lead training course represented as qualifying a person for certification unless the course is accredited by the department and uses approved instructors.

Revisions to ch. DHS 163 have been promulgated to incorporate the pre-renovation education distribution (PRE) and renovation, repair and painting (RRP) requirements for programs under the Environmental Protection Agency's regulations at 40 CFR part 745, subparts E and L. The Department's lead program regulates the following lead-based paint activities in target housing and child-occupied facilities built before 1978:

- Pre-renovation information distribution and renovation activities conducted for compensation.
- Lead hazard reduction, including abatement and ordered lead remediation.
- Lead investigation, including dust, paint, soil sampling and onsite testing; clearance, inspection, hazard screen, risk assessment and elevated blood lead investigation activities.

Applicability to Renovations

The PRE and RRP provisions are described in detail at DHS 163, Subchapter II. These rules apply to renovations performed for compensation in target housing and child-occupied facilities, except when:

- The paint involved in the renovation is determined to be lead-free by a certified lead inspector, risk assessor or hazard investigator or by a certified renovator using a Wisconsin-recognized test kit.
- The work is minor repair or maintenance.
- The work is renovation not performed for compensation and no other conditions requiring certification exist.
- The work is renovation performed by the homeowner in the owner's owner-occupied unit.

Emergency renovations are exempt from certain provisions, including the PRE requirements, but not from cleaning and post renovation cleaning verification.

Accreditation of Training Courses

Training course accreditation is described in detail at DHS 163, Subchapter III. A person wishing to offer a course leading to certification, including lead-safe renovation and lead sampling initial or refresher courses, must submit a complete application with course materials and fee to the Department. The course must cover all curriculum requirements identified in Subchapter III. Initial contingent accreditation lasts for 2 years during which time the Department will conduct onsite course audits to determine if the course, as held, meets and complies with all course requirements. Courses deemed to meet all requirements are granted full approval and may renew their accreditations at 4-year intervals.

Pre-Renovation Education Requirements

The PRE requirements are described in detail at DHS 163.14(10). Renovation companies must:

- Provide the pamphlet, Renovate Right, to owners and occupants of target housing and to owners, operators and parents or guardians in child-occupied facilities before beginning renovation work.
- Obtain signature acknowledging receipt of pamphlet, or other proof of delivery.
- Post information in child-occupied facilities and multi-family housing.

Renovation, Repair and Painting Requirements

Certified Company Requirements

DHS 163.10 to 163.12 describes requirements for certification. Companies must be Department-certified and assign a Department-certified lead-safe renovator to each renovation. To become certified, a company must submit an application and pay a fee for a 2-year certification. Companies must:

• Assign a certified lead-safe renovator to oversee each renovation project.

• Use only a certified renovator and certified renovator-trained workers to perform renovations.

• Ensure the use of lead-safe work practices and that prohibited practices are not used.

• Meet the pre-renovation education requirements.

• Create and maintain required records.

Certified Renovator Requirements

Certified renovator responsibilities are described at DHS 163.13 and 163.14(11). To be certified as a lead-safe renovator, an individual must complete a one-day lead-safe renovation course and apply with fee to the Department for a 2-year certification. Certified renovators must:

• Provide training to untrained workers on the lead-safe work practices to be used.

• Be onsite to conduct or oversee posting of signs, containment setup, and final cleaning.

• Be onsite regularly to direct and ensure ongoing maintenance of containment barriers and use of lead-safe work practices.

• Be available on-site during work or by telephone to return immediately to the worksite.

• Be in possession of a valid, unexpired certification card when at the jobsite.

• Personally conduct the post-renovation cleaning verification.

• Prepare required renovation records.

Certified Lead Sampling Technician Requirements

Lead sampling technician activities and responsibilities are described at DHS 163.13 and 163.14(5). Lead sampling technicians may conduct clearance after renovation, but not lead abatement. A lead sampling technician must complete a one-day lead sampling course and apply with fee for a 2-year certification. Sampling technicians must:

• Complete clearance requirements, including collect and send dust-wipe samples to a recognized lab.

• Interpret laboratory results and prepare a clearance report for the contractor and owner.

• Be in possession of a valid, unexpired certification card when conducting regulated work.

Renovation Work Practice Requirements

Renovation work practices are described at DHS 163.14(11). Workers must follow documented methodologies to protect occupants from lead hazards created during renovations, including:

• Posting warning signs, containing work areas, protecting furnishings and cleaning.

• Prohibitions on using certain dangerous work practices, including: open-flame burning or torching, operating a heat gun over 1100° F, using a chemical paint stripper with methylene chloride, using a high speed machine to remove paint without a HEPA-filtered exhaust system, high-pressure water blasting without HEPA-filtered exhaust control and a water collection system, using an improperly operating HEPA vacuum, and dry sweeping in the work area.

• Proper handling and transporting of waste.

• Final visual inspection and post renovation cleaning verification using prescribed protocol.

Renovation Recordkeeping Requirements

Recordkeeping requirements for renovations are described in detail at DHS 163.13(3). The renovation company must maintain records of its regulated activities for 3 years, including:

• Any paint testing results.

• Copies of signed pamphlet acknowledgements forms or other documentation of delivery.

• Documentation and certification that renovation requirements were followed.

• Individual worker training records.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved state program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized state program.

V. Withdrawal of Authorization

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw authorization of a state or Indian Tribal renovation, repair and painting program, and/or a lead-based paint pre-renovation education program, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

List of Subjects

Environmental protection, State of Wisconsin, Hazardous substances, Lead, Renovation, Renovation work practice standards, Renovation training, Renovation certification, Renovation notification, Reporting and recordkeeping requirements.

Dated: January 27, 2010.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–2793 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0832; FRL–8810–5]

Pesticide Products; Registration Applications for a New Active Ingredient Chemical; Demiditraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before March 11, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0832, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0832. EPA's policy is that all comments

received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: BeWanda Alexander, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7460; e-mail address: *alexander.bewanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *File Symbol*: 1007–OL. *Applicant*: Pfizer, Inc., 7000 Portage Rd., KZO 300–403 SW., Kalamazoo, MI 49001. *Product name*: Demiditraz Technical. *Active ingredient*: Insecticide and Demiditraz at 100%. *Proposed classification/Use*: None.

2. *File Symbol*: 1007–OA. *Applicant*: Pfizer, Inc., 7000 Portage Rd., KZO 300–403 SW., Kalamazoo, MI 49001. *Product name*: CA Acaricide. *Active ingredient*: Insecticide and Demiditraz at 17.5%. *Proposed classification/Use*: Spot on treatment for dogs.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 28, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–2826 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9112–4]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Troy, VT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Troy, Vermont ("Town") for the purchase of foreign manufactured butterfly valves and actuators for an arsenic and manganese removal water treatment installation project. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by the Town and its consulting engineer, it has been determined that there are currently no domestic manufactured butterfly valves and actuators available to meet its proposed specialized needs and project schedule. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of foreign manufactured butterfly valves and actuators by the Town, as specified in its November 19, 2009 request.

DATES: *Effective Date:* January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Katie Connors, Environmental Engineer, (617) 918–1764, or David Chin, Environmental Engineer, (617) 918–1658, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111–5, Buy American requirements, to the Town for the purchase of non-domestic manufactured butterfly valve and actuators to meet the Town's project schedule to install an for arsenic and manganese water treatment system.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with the public the interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The Town of Troy, Vermont ("Town") is receiving funding from the VT ARRA Drinking Water State Revolving Fund (DWSRF) to install a water treatment facility for arsenic and manganese removal, as well as water meters in the distribution system. The treatment system is a skid mounted, preassembled and prewired arsenic and manganese removal system from a U.S. manufacturer. The components of the filtration system are manufactured in the U.S. with the exception of the system's electrically actuated butterfly valves which are manufactured by Value Valve in Taiwan. The Town is requesting a waiver for these foreign manufactured valves and actuators which are standard components provided on the selected U.S. manufacturer's filtration treatment systems.

The waiver is being requested after bid solicitation has been completed and construction has begun. The late request was due to unavailability of a domestic company able to provide the specialized valves and actuators according to the project schedule. The Town is under an enforcement action deadline by the State of Vermont to install and operate an arsenic removal system by April 30, 2010.

The Town contacted several domestic manufacturers of butterfly valve and actuators and although some of them could provide the products within the project specifications, they could not do so within the established project schedule. In order to adhere to the April 30, 2010 regulatory deadline, the skid system must be delivered to the construction site by December 2009. The domestic manufacturers could not produce the specialized valves and actuators needed for incorporation into the system within the time required. The filter system, including the valves and actuators, is assembled in California and will be freighted across the country to Troy, VT. Delaying the components several weeks would put their availability to the manufacturer at mid December to early January, depending on the domestic supplier. To wait for domestically available valves and actuators and allowing for the time necessary to assemble and test the complete system would have pushed delivery of the system to the end of January. The delay would result in the Town of Troy possibly violating its regulatory compliance schedule.

An evaluation of all of the supporting documentation by EPA's national contractor, including results of research and communication with manufacturers of valves and actuators, supports and confirms the Town's claim that there are currently no domestic manufacturers that can provide specialized butterfly valves and actuators to meet the pre-established compliance schedule.

The consulting engineer for the Town identified three domestic manufacturers in the United States. The three companies could provide the valves and actuators. However, the shortest delivery time available was 6–8 weeks, with one of the companies estimating the delivery period to be 10–12 weeks. The supporting information for this proposed project includes contacts with valve and actuator manufacturers, telephone calls, and e-mail correspondence with domestic manufacturers. An independent review of the submitted documentation by EPA's national contractor confirmed this documentation.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the Town of Troy, VT, to possibly violate the established compliance schedule. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' " ("Memorandum"), defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design."

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Town

establishes both a proper basis to specify a particular manufactured good, and that the domestic manufactured good that is currently available cannot be delivered in the necessary timeframe for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States in the necessary timeframe, the Town of Troy, Vermont is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of non-domestic manufactured butterfly valves and actuators documented in Town's waiver request submitted to the EPA on November 19, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: January 29, 2010.

Ira Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–2810 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9112–5]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Gloucester, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City of Gloucester, Massachusetts ("City") for the purchase of foreign manufactured rotary sludge dewatering presses. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The City's proposed wastewater treatment facility improvements will include replacement of the existing belt filter press for sludge generated at the plant. Based upon information submitted by the City and its consultants, it was determined that two 6-channel rotary press sludge dewatering units, manufactured by Fournier Industries of Quebec, Canada, will meet the City's design and performance specifications. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The City, through its consulting engineers, has provided sufficient documentation to support their request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of two, six channel rotary press sludge dewatering units, manufactured by Fournier Industries, by the City, as specified in its September 28, 2009 request, as part of the improvements to the wastewater treatment facility.

DATES: *Effective Date:* January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Mark Spinale, Environmental Engineer, (617) 918–1547, or Katie Connors, Environmental Engineer, (617) 918–1658, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Sections 1605(c) and 1605(b)(2), the EPA hereby provides notice that it is granting a project waiver of the requirements of Sections 1605(a) of Public Law 111–5, Buy American requirements, to the City of Gloucester, ("City"), Massachusetts for the purchase of two, six channel rotary press sludge dewatering units, manufactured by Fournier Industries of Quebec, Canada. It has been determined that these rotary presses meet the City's technical specifications for design and performance of a sludge dewatering unit as part of its wastewater treatment plant improvement project. Based on the information provided by the applicant, there are no domestically manufactured rotary sludge presses that at this time meet the specific design criteria established for this unit in the City's project.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with public the interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The wastewater treatment facility for the City is a primary treatment plant designed to handle an annual average flow of 7.24 million gallons per day. The plant began operations in 1984, and in the early 1990's the facility was modified to provide an ocean outfall extension as well as odor control and disinfection improvements. Plant improvements again occurred in the mid-2000's with the replacement of various pumps and sludge removal mechanisms. However, no other significant expansions or upgrades have occurred during the 25 years of operations.

Most of the equipment at the treatment facility is original equipment that has largely reached or exceeded its expected service life. The City is now replacing major components of the facility through a phased program of equipment replacement and facility refurbishment. Included in the first phase of the facility-wide improvements is the installation of a new rotary sludge dewatering unit to replace the existing belt filter press. The City is requesting a waiver from the Buy American Provisions for the purchase of two foreign made rotary press sludge dewatering units manufactured by Fournier Industries (Quebec, Canada).

The key selection criteria established by the City and its consulting engineers for the sludge dewatering equipment include:

• Maintain or improve the dewatered dry solids concentration of 24% or greater.

• Minimize service water consumption during operation.

• Minimize long term operations and maintenance costs.

• Reduce odors and improve working conditions for operators by minimizing exposure to odorous and hazardous gases released from the sludge as well as exposure to bio-aerosols and pathogens. To achieve this goal, enclosed dewatering equipment is required.

• Allow for automatic adjustment for variation in feed solids concentrations and sludge mix ratios to provide consistent and optimum cake solids.

• Allow for unattended, automatic operation.

• Allow for backup capacity during periods of equipment failure and routine maintenance.

As part of the review of potentially viable sludge dewatering units, four technologies were evaluated by the City and their consultants: (1) Belt filter press, (2) centrifuge system; (3) screw press and (4) rotary press. Of the four technologies, it was determined that the rotary sludge press is the preferred technology because it ranked the highest in terms of meeting the key criteria highlighted above. In particular, the rotary presses manufactured by Fournier Industries were identified as a technically and economically feasible unit meeting all of the selection criteria established as part of the design requirements. The Fournier Rotary Presses are the preferred technology for installation at the City's wastewater treatment plant because of the following advantages:

• High cake solids concentration.

• Low odor emissions due to the enclosed design.

• Provides for continuous operation and has the flexibility to increase capacity based on influent flow.

• Low maintenance due to the slow rotational speed, requiring minimal operator attention.

• Low energy requirements resulting in low operation and maintenance costs.

• Each channel is an independent self-contained modular unit which can be interchanged with other same model rotary presses.

• Low noise and vibration output due to low operations speeds.

• Compact size resulting in smaller building and room footprint requirements.

• Filtration elements within each channel are of a non-clogging design which does not require washwater during operation.

The project specifications stipulate that the rotary press equipment be capable of meeting the following design and performance criteria:

• *Type of Unit:* six channel rotary press

• *Blended Sludge Fraction (% Solids):*

60–90% Primary Sludge
5–10% Scum
5–30% Septage

• *Sludge Feed Concentration (% Solids):* 2–8%

• *Dry Solids Feed Rate:* 200–400 dry lbs/hr/channel

• *Hydraulic Sludge Feed Rate:* 35–160 gpm

• *Dewatered Sludge Solids Concentration (% Solids):*

test condition (I)—30% minimum
test condition (II)—25% minimum

The project specifications also expressly require that the manufacturer of the rotary press have a minimum of 10 years demonstrated experience in the design, application, fabrication and supply of rotary press equipment for wastewater treatment plants. The specifications go on to further require that demonstration of experience shall take the form of a list of not less than 10 operating sludge dewatering installations of similar service and size including process performance data.

Based on the review of available information, there is only one domestic manufacturer of similar rotary type presses for municipal sludge. However, this manufacturer only produces one and two channel rotary fan presses and currently cannot meet the design specifications calling for a six channel rotary press, or the experience requirements specified for this proposed project. The domestic manufacturer has only been manufacturing and installing its rotary fan press since 2004, which is less than the 10 year experience requirement specified for the project. For these reasons, the Fournier Industries Rotary Sludge Press is the only unit at the present time that is acceptable in terms of meeting the design and experience specifications of this project.

The April 28, 2009 EPA HQ Memorandum, "Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' " ("Memorandum"), defines *reasonably available quantity* as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

The City has requested a waiver of the ARRA Buy American provisions on the basis of unavailability of a U.S. manufactured product that will meet the design and performance criteria specified for the sludge dewatering unit. The evaluation of all of the submitted documentation by EPA's technical review team supports the City's claim that at this time no domestic manufacturer can provide a suitable rotary sludge dewatering press which meets the specifications for this unit. Based on the information available, and to the best of our knowledge, there do not appear to be other rotary press sludge dewatering units manufactured in the United States that are available at this time to meet the City's design specifications and performance requirements for this unit.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring SRF eligible recipients such as the City to revise their design standards and specifications. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the City established both a proper basis to specify the particular good required and that this manufactured good was not available from a producer in the United States able to meet the design specifications for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available

from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of the two specified Fournier Industries 6-channel rotary press sludge dewatering units documented in City's waiver request submittal dated September 28, 2009 as part of its wastewater treatment plant improvements. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605.

Dated: January 29, 2010.

Ira Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–2817 Filed 2–8–10; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—Emergency extension without change: Employer Information Report (EEO–1).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for an emergency extension of the Employer Information Report (EEO–1) on January 20, 2010, to be effective after the January 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from certain private employers on the EEO–1 Report form since 1966.

Overview of Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Reporting Hours: 599,000.

Respondent Cost: $11.4 million.

Federal Cost: $2.1 million.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the EEO–1 reporting requirement. Employers in the private sector with 100 or more employees and some Federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data is used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data is shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other Federal agencies. Pursuant to § 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data is also shared with State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between three and four EEO–1 reports annually. The annual number of responses is approximately 170,000. The form is estimated to impose 599,000 burden hours annually. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: January 29, 2010.

Stuart J. Ishimaru,

Acting Chairman, for the Commission.

[FR Doc. 2010–2767 Filed 2–8–10; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—Emergency extension without change: State and Local Government Information Report (EEO–4).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for an emergency extension of the State and Local Government Information Report (EEO–4), on January 20, 2010, to be effective after the January 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from State and local governments with 100 or more full-time employees since 1974.

Overview of Information Collection

Collection Title: State and Local Government Information Report (EEO–4).

OMB Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more Employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Number of Responses: 13,456.

Reporting Hours: 44,719.

Cost to Respondents: $1,045,000.

Number of Forms: 1.

Form Number: EEOC Form 164.

Federal Cost: $187,500.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for State and local governments. State and local

governments with 100 or more employees have been required to submit EEO–4 reports since 1974 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against State and local governments and to provide information on the employment status of minorities and women. The data are shared with several other Federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, U.S.C. 2000e–8(d), as amended, EEO–4 data is shared with State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO–4 survey is 9,000 state and local governments. These 9,000 jurisdictions file about 13,456 reports due to the requirement for some to file separate reports by function. The form is estimated to impose 44,719 burden hours biennially.

Dated: January 29, 2010.

Stuart J. Ishimaru,

Acting Chairman, for the Commission.

[FR Doc. 2010–2777 Filed 2–8–10; 8:45 am]

BILLING CODE 6750–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—Emergency extension without change: Local Union Report (EEO–3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for an emergency extension of the Local Union Report (EEO–3), on January 20, 2010, to be effective after the January 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from local unions on the EEO–3 form since 1966 (biennially since 1985).

Overview of Information Collection

Collection Title: Local Union Report (EEO–3).

OMB Number: 3046–0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 1,399.

Reporting Hours: 4,500 (including recordkeeping).

Cost to Respondents: $85,000.

Federal Cost: $60,000.

Number of Forms: 1.

Form Number: EEOC Form 274.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires labor organizations to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to produce reports from the data. The EEOC issued regulations requiring referral local unions with 100 or more members to submit EEO–3 reports. The individual reports are confidential. The EEOC uses EEO–3 data to investigate charges of discrimination and for research.

Burden Statement: The estimated number of respondents included in the biennial EEO–3 survey is 1,399 referral unions. The form is estimated to impose 4,500 burden hours biennially. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: January 29, 2010.

Stuart J. Ishimaru,

Acting Chairman, for the Commission.

[FR Doc. 2010–2776 Filed 2–8–10; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ageny Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—Emergency extension without change: Elementary-Secondary Staff Information Report (EEO–5).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for an emergency extension of the Elementary-Secondary Staff Information Report (EEO–5) on January 20, 2010, to be effective after the January 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: Elementary and secondary public school systems and districts have been required to submit EEO–5 reports to EEOC since 1974 (biennially in even-numbered years since 1982). Since 1996, each public school district or system has submitted all of the district data on a single form, EEOC Form 168A. The individual school form, EEOC Form 168B, was eliminated in 1996, reducing the respondent burden and cost.

Overview of Information Collection

Collection Title: Elementary-Secondary Staff Information Report (EEO–5).

OMB Number: 3046–0003.

Frequency of Report: Biennial.

Type of Respondent: Certain public elementary and secondary school districts.

Description of Affected Public: Certain public elementary and secondary school districts.

Number of Responses: 7,155.

Reporting Hours: 10,000.

Cost to the Respondents: $266,000.

Federal Cost: $160,000.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for elementary and secondary public school districts. The EEOC uses EEO–5 data to investigate charges of employment discrimination against elementary and secondary public school districts. The data also are used for research. The data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data also are shared with State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the biennial EEO–5 survey is 7,155 public elementary and secondary school districts. The form is estimated to impose 10,000 burden hours biennially.

Dated: January 29, 2010.

Stuart J. Ishimaru,

Acting Chairman, for the Commission.

[FR Doc. 2010–2778 Filed 2–8–10; 8:45 am]

BILLING CODE 6750–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 11, 2010, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 14, 2010

B. New Business

- Spring 2010 Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions and Spring 2010 Regulatory Performance Plan

C. Reports

- Office of Management Services Quarterly Report

Dated: February 4, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–2855 Filed 2–5–10; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 4, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC 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 OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before April 12, 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: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0625.

Title: Section 24.103, Construction Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for–profit, not–for–profit institutions and state, local or tribal government.

Number of Respondents: 5 respondents; 90 responses.

Estimated Time Per Response: .5 – 3 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 102 hours.

Total Cost Burden: $41,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Information on the private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, "Wireless Services Licensing Records." The licensee records will be publicly available and routinely used in accordance with subsection b. or the Privacy Act. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, "Wireless Services Licensing Records," and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Need and Uses: The Commission will submit this expiring collection to the Office of Management and Budget (OMB) as an extension in order to obtain the full three year clearance from them. There is no change in the recordkeeping and/or reporting requirements. The Commission has reduced the total

annual burden by 29 hours and the cost burden by $12,000.

This information collection requires that nationwide narrowband Personal Communications Services (PCS) licensees must, under 47 CFR 24.103, notify the Commission by filing FCC Form 601, no later than 15 days after the end of the five year period following the initial grant of their license, indicating that they plan to satisfy the alternative requirements to provide "substantial service". Also, under section 24.103(f), upon meeting the five and 10 year benchmarks in paragraphs (a), (b), and (c) of this subsection, licensees shall notify the Commission by filing FCC Form 601 and including a map and other supporting documentation that demonstrate the required geographic area coverage, population coverage, or substantial service to the license area within 15 days of the expiration of the relevant period has been met.

The reporting and recordkeeping requirements for this information collection are used to ensure that licensees timely construct systems that are sound, favorable, and substantially provide a level of service above mediocre service, and that those systems serve a significant area of the U.S. population.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–2775 Filed 2–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

February 2, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC 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 OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before April 12, 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 themto: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0856.

Title: Universal Service – Schools and Libraries Universal Service Support Program Reimbursement Forms.

Form No.: FCC Forms 472, 473 and 474.

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: 22,200 respondents; 97,100 responses.

Estimated Time Per Response: 1 – 1.5 hours.

Frequency of Response: On occasion and annual reporting requirements, third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 1, 4(i), 4(j), 201–205, 214, 254, 312(d), 312(f), 403 and 503(b).

Total Annual Burden: 143,150 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission does not request that respondents submit confidential information to the Commission. If the applicants wish to submit information that they believe is confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission will submit this expiring information collection after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. There is no change to the reporting and or third party disclosure requirements. The Commission is reporting a 9,500 hour increase in burden which is due to an increase in the number of respondents based on the actual number of participants in the E–rate program. For the FCC Form 473, the Commission reduced the number of respondents to 5,000 based on the actual number of service providers filing FCC Form 473 in funding year 2008. There was no change in burden for FCC Form 474.

The FCC Form 472 is used to establish a process and procedure for an eligible entity to seek reimbursement from the service provider for the discounts on services paid in full. After receiving an invoice from the service provider, together with a FCC Form 472, the administrator (USAC – Universal Service Administrative Company) is able to verify the eligible service and approved amounts that should be reimbursed and can make the appropriate payment to the service provider. The FCC Form 472 is also used to ensure that each service provider that provided discounted services within the current funding year for which it submits an invoice to USAC and that invoices submitted from service providers for the cost of discounted eligible services do not exceed the amount that has been approved.

FCC Form 473 is used to establish that the participating service provider is eligible to participate in the E–rate program and to confirm that the invoice forms submitted by the service provider are in compliance with the E–rate rules. The FCC Form 473 is also used by USAC to assure that the dollars paid out by the universal service fund go to eligible providers.

FCC Form 474 is to establish the process and procedure for a service provider to seek payment for the discounted costs of services it provided to billed entities for eligible services. After receiving an invoice from the

service provider, together with a FCC Form 474, USAC is able to verify that the eligible and approved amounts can be paid. The FCC Form 474 is also used to ensure that each service provider has provided discount services with the current funding year for which it submits an invoice to USAC and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.

All of the requirements contained in this information collection are necessary to implement the congressional mandate for the schools and libraries universal service support program and reimbursement process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–2773 Filed 2–8–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: AMERICAN FAMILY ASSOCIATION, Station WSQH, Facility ID 91176, BMPED–20100126AFU, From MERIDIAN, MS, To DECATUR, MS; AUTAUGAVILLE RADIO, INC., Station WKXN, Facility ID 73194, BPH–20100106AFK, From GREENVILLE, AL, To FORT DEPOSIT, AL; BETTER PUBLIC BROADCASTING ASSOCIATION, Station KLXL, Facility ID 174505, BPED–20100125AAF, From WHEELER, TX, To BRISCOE, TX; CALVARY CHAPEL OF TWIN FALLS, INC., Station WIFF, Facility ID 2868, BPED–20091221AFJ, From BINGHAMTON, NY, To WINDSOR, NY; COCHISE BROADCASTING, LLC, Station KXJW, Facility ID 171027, BMPH–20080319ADW, From SINCLAIR, WY, To NORTH ROCK SPRINGS, WY; COMMANDER COMMUNICATIONS CORPORATION, Station WRTM–FM, Facility ID 19864, BPH–20100107AAB, From PORT GIBSON, MS, To SHARON, MS; EQUINOX BROADCASTING CORP, Station WRRQ, Facility ID 165347, BPH–20091221AIT, From WINDSOR, NY, To PORT DICKINSON, NY; LORENZ E. PROIETTI, Station KMQS, Facility ID 166044, BPH–20100104AAK, From WHEATLAND, WY, To WEST LARAMIE, WY; SIMMONS AUSTIN, LS, LLC, Station KRQX–FM, Facility ID 21494, BPH–20091211AFR, From MEXIA, TX, To MART, TX; TELEMEDIA BROADCASTING, INC., Station WGRQ, Facility ID 64922, BPH–20100120ACQ, From COLONIAL BEACH, VA, To FAIRVIEW BEACH, VA; TELIKOJA EDUCATIONAL BROADCASTING, INC., Station WFUZ, Facility ID 91944, BPED–20100105AAL, From CARBONDALE, PA, To TUNKHANNOCK, PA; TUGART PROPERTIES, LLC, Station WNGA, Facility ID 26854, BMPH–20091008AEA, From HELEN, GA, To CLERMONT, GA; UNITED STATES CP, LLC, Station KRYE, Facility ID 164276, BPH–20100125AIM, From RYE, CO, To OLNEY SPRINGS, CO.

DATES: Comments may be filed through April 12, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau, Federal Communications Commission.

[FR Doc. 2010–2774 Filed 2–8–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, February 11, 2010

Date: February 11, 2010.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February, 11, 2010, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

The meeting will also include a report on the status of the National Broadband Plan, providing a framework for the national purposes portion of the plan.

ITEM NO.	BUREAU	SUBJECT
1	OFFICE OF THE GENERAL COUNSEL	TITLE: Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to enhance the efficiency, openness, and transparency of the Commission's proceedings by improving and modernizing certain organizational and procedural rules.
2	OFFICE OF THE GENERAL COUNSEL	TITLE: Amendment of the Commission's Ex Parte Rules and Other Procedural Rules SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to improve the transparency and effectiveness of the FCC's decision–making process by reforming the ex parte rules.
3	WIRELINE COMPETITION	TITLE: Schools and Libraries Universal Service Support Mechanism (CC Docket No. 02–6) SUMMARY: The Commission will consider an Order and Notice of Proposed Rulemaking to enable schools that receive funding from the E–Rate program to allow members of the general public to use the schools' Internet access during non–operating hours at no additional cost to the Universal Service Fund. This order and notice do not permit or require any changes to E–Rate applications due on February 11, 2010.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e–mail to: fcc504@fcc.gov <mailto:fcc504@fcc.gov> or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web page at www.fcc.gov/live <http://www.fcc.gov/live>.

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to www.capitolconnection.gmu.edu <http://www.capitolconnection.gmu.edu/>.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e–mail at FCC@BCPIWEB.com.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–2942 Filed 2–5–10; 4:15 pm]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2010–1508 published on page 4394 of the issue for Wednesday, January 27, 2010.

Under the Federal Reserve Bank of Chicago heading, the entry for Vernon R. Pfaff, Fairbury, Indiana, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Vernon R. Pfaff, individually, and as part of a group acting in concert with Barbara Ann Pfaff, both of Fairbury, Nebraska, to acquire voting shares of United Commerce Bancorp, and thereby indirectly acquire voting shares of United Commerce Bank, both Bloomington, Indiana.

Comments on this application must be received by February 17, 2010.

Board of Governors of the Federal Reserve System, February 4, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–2756 Filed 2–8–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors.

Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Capital Z Partners III GP, LTD; Capital Z Partners III GP, L.P., both of George Town, Cayman Islands; Capital Z Partners Management, LLC, Dover, Delaware; Capital Z Partners III, L.P., George Town, Cayman Islands; and Bradley E. Cooper, and Robert A. Spass, both of New York, New York, as principals, to acquire at voting shares of Opportunity Bancshares, Inc., Bettendorf, Iowa, and thereby indirectly acquire voting shares of Opportunity Bank, N.A., Richardson, Texas.

Board of Governors of the Federal Reserve System, February 4, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–2755 Filed 2–8–10; 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.: 011346–019.

Title: Israel Trade Conference Agreement.

Parties: A.P. Moller-Maersk A/S; Maersk Line Limited; and Zim Integrated Shipping Services, Ltd.

Filing Party: Howard A. Levy, Esq.; Chairman; Israel Trade Conference; 80 Wall Street, Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment adds American President Lines, Ltd. as a party to the agreement.

Agreement No.: 011443–005.

Title: Space Charter and Cooperative Working Agreement Between NYK and WWL.

Parties: Nippon Yusen Kaisha and Wallenius Wilhelmsen Lines AS.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes rate-discussion authority and revises the delegation of authority under the agreement.

Agreement No.: 201205.

Title: North American Maritime Services Cooperative Working Agreement.

Parties: Ceres Terminals Incorporated; International Transportation Service, Inc.; Marinus Consulting, Inc.; and North American Maritime Services, LLC.

Filing Party: Wayne R. Rohde, Esq.; Sher and Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement would authorize the parties to form and manage a joint venture limited liability company to provide stevedoring and other services for the loading and unloading of roll-on/roll-off and other cargoes at ports in the United States and in other countries.

Dated: February 4, 2010.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–2820 Filed 2–8–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 10–01]

AMC USA, Inc. v. International First Service S.A. a/k/a IFS S.A, its Agents, Affiliated, Related and Partner Companies, and International First Service Argentina a/k/a AR–IFS, its Agents, Affiliated, Related and Partner Companies, and International First Service USA, Inc. a/k/a IFS USA, Inc. d/b/a Global Wine Logistics USA Inc. a/k/a GWL USA, Inc., and Global Wine Logistics USA Inc. a/k/a GWL USA, Inc., and Anita Mcneil and Ipsen Logistics GmbH; Notice of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by AMC USA, Inc. ("AMC"), hereinafter "Complainant," against International First Service S.A. a/k/a IFS S.A ("IFS S.A."); International First Service USA, Inc. a/k/a IFS USA, Inc. ("IFS USA") d/b/a/Global Wine Logistics USA Inc. a/k/a GWL USA, Inc. ("GWL USA"); Global Wine Logistics USA Inc. a/k/a GWL USA, Inc. ("GWL USA"); Anita McNeil; International First Service Argentina a/k/a AR–IFS ("AR–IFS"); and Ipsen Logistics GmbH ("Ipsen") [1], hereinafter "Respondents". Complainant asserts that it is a licensed non-vessel operating common carrier incorporated in New Jersey and registered in New York. Complainant alleges that Respondent IFS S.A., is an unlicensed non-US-based ocean transportation intermediary/non-vessel operating common carrier. Complainant alleges that Respondents IFS USA and GWL USA, are incorporated in Delaware and are holding themselves out to the public as providers of transportation services, and have assumed responsibility for transportation. Complainant alleges that Respondent ANITA MCNEIL is the President of IFS USA and GWL USA and formerly Executive Vice President of Complainant, AMC. Respondent Ipsen is incorporated in Bremen, Germany and is a partner company to IFS S.A. Respondent AR–IFS., is affiliated with IFS USA and located in Buenos Aires, Argentina.

Complainant asserts that Respondents violated the Shipping Act of 1984 by: (1) Failing to keep open to the public in an automated tariff system, tariffs showing all rates, charges, classifications, rules, and practices between all points and ports on its route and on any through transportation that has been established; (2) failing to file with the Commission the service contracts entered into with vessel operating common carriers; (3) engaging in a "willful and deliberate fraudulent scheme to steal customers, employees and proprietary information" from Complainant in order to gain an unfair business advantage and/or in order to provide ocean transportation for property for less than the rates and/or charges that would otherwise have applied; (4) operating under agreements that were required to be filed under the Shipping Act that were not effective under Act; (5) working together to allow parties to obtain transportation for property at less than the rates or charges that would have applied by unjust and unfair means; (6) failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, and delivering property; and (7) knowingly and willfully accepting cargo for the account of an ocean transportation intermediary that does not have a tariff and a bond, insurance or other surety. 46 U.S.C. 40501(a), 40502(b)(1), 41102,

[1] Respondent Ipsen was not included in the caption block of the complaint as filed, but was listed as a Respondent within the text of the complaint. As such, Respondent Ipsen has been added to the caption in this Notice.

41104(1) and 41104(11).[2] Finally, complainant also alleges that Respondents "acted as ocean transportation intermediaries in the United States without a license" in violation of the Shipping Act and the Commission's regulations. 46 U.S.C. 40901, and 46 CFR 515.3 and 520.

Complainant asserts that as a direct result of Respondent's violations of the Shipping Act, Complainant has had "injury involving customer relations, its reputation in the industry and has been forced to take legal action." Complainant requests the Commission "deny FMC OTI licenses based upon unsuitable character and violations of the Shipping Act as described herein"; and order Respondents to cease and desist from the above described violations of the Shipping Act." Complainant requests that the Commission award reparations to Complainant in a sum of no less than $283,918.95, plus reasonable attorney's fees, interests and costs; that Respondents pay any other damages that may be determined proper; and that the Commission impose any other relief as the Commission determines to be proper, fair, and just.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 4, 2011 and the final decision of the Commission shall be issued by June 6, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–2818 Filed 2–8–10; 8:45 am]

BILLING CODE 6730–01–P

[2] Complainant cites to "§ 10(b)(2)(11)" which does not exist, but quotes the language contained in § 10(b)(11), 46 U.S.C. 41104(11).

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier—Ocean Transportation Intermediary

Falcon Containerline LLC, 257 William Street, Piscataway, NJ 08854, Officers, Bilal B. Nasir, President, (Qualifying Individual), Nasir Amin, Secretary/Managing Director.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Best Way Logistics Corp., 901 SW. 98th Terrace, Pembroke Pines, FL 33025, Officers, Christopher J. Bouscher, President/Secretary, (Qualifying Individual), Gavin Bouscher, Vice President.

H.A.B. International, Inc., 8601 NW. 68th Street, Miami, FL 33166, Officers, Harold A. Beharry, President, (Qualifying Individual), Brehaspati Beharry, Vice President.

Guardian International, Inc., 3728 Lake Avenue, Ft. Wayne, IN 46805, Officers, Tonya R. Watson, Vice President, (Qualifying Individual), Sabah A. Qiyas, President.

D.J. Powers Company, Inc., 5000 Business Center Drive, Suite 1000, Savannah, GA 31405, Officers, Rhett N. Willis, President/CEO, (Qualifying Individual), Richard E. Carter, Chairman.

H T International Inc., 281 E. Redondo Beach Blvd., Gardena, CA 90248, Officers, Alessandro E. Bernardini, Sales Manager, (Qualifying Individual), Glenda Valdez, President/Corporate Secretary.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants (Cont'd):

Vortex Worldwide Logistics Corp., 10125 NW. 116th Way, #10, Miami, FL 33178, Officers, Christian M. Ollino, President/Secretary, (Qualifying Individual), Lisette A. Ollino, Vice President.

Coltrans (USA), Inc., 10925 NW. 27th Street, #102, Miami, FL 33172, Officers, Jan Gerdes, Vice President, (Qualifying Individual), Jochen Raute, President.

U.S.G.A. Logistic, Inc., 16206 Aldine Westfield Road, Houston, TX 77032, Officers, Frederic Lalou, COO, (Qualifying Individual), Jean Jacques Lalou, CEO.

Geevee Enterprises Inc. dba Aerosend, 245 W. Roosevelt Road, Building 12, Unit 90, West Chicago, IL 60185, Officers, Charity Marbella, Executive Vice President, (Qualifying Individual), Gil Valenzuela, President.

Dapex Inc., 83–77 Woodhaven Blvd., Suite 1D, Woodhaven, NY 11421, Officer; David Dvinov, President/Secretary, (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants (Cont'd)

FSS Global Logistics Limited Liability Company, 40 Newport Parkway, Suite 1006, Jersey City, NJ 07310, Officers, Shafeik Bacchus, Manager, (Qualifying Individual), Sathya Prakash Santhanam, Chief Operating Officer.

Dated: February 4, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–2819 Filed 2–8–10; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Adoption/Certification Workgroup Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming subcommittee meeting of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee's Adoption/Certification Workgroup.

General Function of the Committee: To provide recommendations to the National

Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on February 25, 2010, from 10 a.m. to 3 p.m./Eastern Time.

Location: OMNI Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. Please check the ONC Web site for additional information as it becomes available. The meeting will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroup will be discussing patient-safety issues related to the use of electronic health records—both risks and approaches to mitigating those risks. The workgroup will be hearing testimony from stakeholder groups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 18, 2010. Oral comments from the public will be scheduled between approximately 2 p.m. and 3 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business on that day.

Persons attending advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 4, 2010.

Judith Sparrow,

Office of Programs and Policy, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–2715 Filed 2–8–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I delegate to the Director, Division of Unaccompanied Children's Services (DUCS), the DUCS Supervisory Program Specialist, DUCS Federal Field Specialists and DUCS Case Managers, the following authority delegated to the Director, Office of Refugee Resettlement (ORR), on April 1, 2009, by the Assistant Secretary for Children and Families under section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457:

(a) Authority Delegated

1. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, section 235(c)(2), to place an unaccompanied alien child in the least restrictive setting that is in the best interest of the child.

2. Authority under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, section 235(c)(3)(A) to place an unaccompanied alien child with a custodian upon determining that the proposed custodian is capable of providing for the child's physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child and an independent finding that the custodian has not engaged in any activity that would pose a potential risk to the child.

(b) Limitations

1. This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations.

2. This delegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families authorities.

3. This delegation shall apply only to placement decisions made for unaccompanied Haitian children in the custody of ORR as a result of the January 12, 2010 earthquake in Haiti.

(c) Effective Date

This delegation of authority is effective on date of signature.

I hereby affirm and ratify any actions taken by the Director of the Division of Unaccompanied Children's Services, the DUCS Supervisory Program Specialist, DUCS Federal Field Specialists and DUCS Case Managers which, in effect, involved the exercise of these authorities prior to the effective date of this delegation.

Dated: February 2, 2010.

Eskinder Negash,

Director, Office of Refugee Resettlement.

[FR Doc. 2010–2785 Filed 2–8–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Cross-Site Evaluation of Children's Bureau Child Welfare Implementation Centers and National Resource Centers.

OMB No.: New Collection.

Description: The Cross-Site Evaluation of the Child Welfare Implementation Centers (IC) and National Resource Centers (NRC) is sponsored by the Children's Bureau, Administration for Children and Families of the U.S. Department of Health and Human Services and involves the conduct of a five-year, cross-site evaluation that examines the effectiveness of the ICs' and NRCs' activities and service provision and the relation of their training and technical assistance activities to organizational and systems change in State and Tribal child welfare systems. Additionally, the evaluation will examine the degree to which networking, collaboration, information sharing, adherence to common principles, and common messaging occurs across all members of the Children's Bureau Training and Technical Assistance (T/TA) Network, which is designed to improve child welfare systems and to support States and Tribes in achieving sustainable, systemic change that results in greater

safety, permanency, and well-being for children, youth, and families. The Children's Bureau desires to assess the quality and effectiveness of the technical assistance it supports, and several of these programs and projects are required to be evaluated, including those funded under Section 105 of The Child Abuse Prevention and Treatment Act, as amended [42 U.S.C. 5106]. Beginning in fiscal year (FY) 2010, the T/TA Network will comprise a group of 30 T/TA providers funded entirely or partially by the Children's Bureau through grants, contracts, and interagency agreements.

The cross-site evaluation uses a mixed-method, longitudinal approach to examine the ICs (funded in FY 2009) and a new cohort of NRCs (funded in FY 2010). Proposed data collection methods are a longitudinal telephone survey of State child welfare directors (or their designees) and Tribal Child Welfare/Social Service Directors (or their designees), a Web-based survey of State and Tribal T/TA recipients, and aggregation of outputs from a Web-based technical assistance tracking system (OneNet) that will be used by the five ICs and 11 NRCs. A Web-based survey will be also administered to members of the T/TA Network. Data collected through these instruments will be used by the Children's Bureau to evaluate the effectiveness of technical assistance delivered to State, local, Tribal, and other publicly administered or publicly supported child welfare agencies and family and juvenile courts and the overall functioning of the T/TA Network.

Respondents: Respondents to two of the survey instruments will be State and Tribal governments. Respondents to the third survey will be private institutions, including universities, not-for-profit organizations, and private companies. Private institutions, including universities and not-for-profit organizations will be respondents to the forms in the OneNet tracking system.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OneNet Form: General T/TA Event	16	26	0.25	104
OneNet Form: NRC T/TA Work Plan	11	45	0.20	99
OneNet Form: NRC T/TA Close-Out	11	45	0.08	39.60
OneNet Form: NRC T/TA Activity	11	528	0.20	1,161.60
OneNet Form: Implementation Project Monthly Report	5	62.40	0.17	53.04
Agency Results Survey	74	1	1	74
Training and Technical Assistance (T/TA) Activity Survey	160	3	0.25	120
Web-Based Network Survey	30	1	0.25	7.50
OneNet Form: Implementation Project Information	5	5.40	0.50	13.50
OneNet Form: Implementation Project T/TA Activity	5	280.80	0.33	463.32

Estimated Total Annual Burden Hours: 2,135.56.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: February 4, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–2804 Filed 2–8–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: CCDF—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: The Improper Payments Information Act of 2002 requires Federal agencies to annually report error rate measures. Section 2 of the Improper Payments Information Act provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR, Part 98 requires preparation and submission of a report of errors occurring in the administration of CCDF grant funds once every three years. The information collected will be used to prepare the annual Agency Financial Report (AFR) and will provide information necessary to offer technical assistance to grantees.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OMB #0970–0323 Record Review Worksheet	17	276.38	15.43	72,497.24
OMB #0970–0323 Data Entry Form	17	276.38	0.18	845.72

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OMB #0970–0323 State Improper Authorizations for Payment Report	17	1	639	10,863

Estimated Total Annual Burden Hours: 84,205.96

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 4, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–2761 Filed 2–8–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–M–0513]

Medical Devices Regulated by the Center for Biologics Evaluation and Research; Availability of Summaries of Safety and Effectiveness Data for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved by the Center for Biologics Evaluation and Research (CBER). This list is intended to inform the public of the availability through the Internet and FDA's Division of Dockets Management of summaries of safety and effectiveness data of approved PMAs.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please include the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness data.

FOR FURTHER INFORMATION CONTACT: Melissa Reisman, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**, providing instead to post this information on the Internet at *http://www.fda.gov*. In addition, the regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during the quarter. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting administrative reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of PMAs approved by CBER for which summaries of safety and effectiveness data were placed on the Internet from July 1, 2009, through September 30, 2009. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SUMMARIES OF SAFETY AND EFFECTIVENESS DATA FOR APPROVED PMAS MADE AVAILABLE JULY 1, 2009, THROUGH SEPTEMBER 30, 2009.

PMA No./Docket No.	Applicant	TRADE NAME	Approval Date
BP090022/0/ FDA–2009–M–0513	Avioq, Inc., Rockville, MD	Avioq HIV–1 Microelisa System	September 21, 2009

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/BiologicsBloodVaccines/BloodBloodProducts/ApprovedProducts/PremarketApprovalsPMAs/ucm185249.htm*

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–2757 Filed 2–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Marketing (BSC, NCHM)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

9 a.m.–5 p.m., February 25, 2010.

8:30 a.m.–1 p.m., February 26, 2010.

Place: CDC, 2400 Century Parkway, Building 2400, Room 1A (1023), Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people. The toll free dial-in number is 1 (877) 617–5977 with a pass code of 3468113.

Purpose: The Secretary, Department of Health and Human Services (HHS), and, by delegation, the Director, CDC, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act (PHSA), as amended to: Develop and implement disease prevention and control, environmental health, and health promotion and health education activities designed to improve the health of the people of the United States. Under these and additional PHSA and other authorities, CDC acts by identifying and defining preventable health problems, maintaining active surveillance of diseases through epidemiologic and laboratory investigations and data collection, analysis, and distribution; conducting operational research aimed at developing and testing effective disease prevention, control, and health promotion programs; administering a national occupational safety and health program; controlling the introduction and spread of infectious diseases, and providing consultation and assistance to other nations and international agencies to assist in improving their disease prevention and control, environmental health, and health promotion activities. CDC carries out these functions through a number of National Centers, Institutes and Offices with expertise and responsibilities in specific areas.

Matters To Be Discussed: The agenda will include: A discussion of the recent organizational changes at CDC, specifically presentations on the vision, mission, goals and organizational structure of the new Office of Communications; discussions on program activities, including scientific programs, that will enable the board to provide recommendations and advice on the future course for health communications and marketing at CDC; and a discussion of focus areas and new ideas to implement and expand health marketing science at CDC.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dionne R. Mason, Committee Management Specialist, NCHM, CDC, 1600 Clifton Road, NE., Mail Stop E–21, Atlanta, Georgia 30333; Telephone: (404) 498–2314, Fax (404) 498–2221; E-mail: *zsu0@cdc.gov.* The deadline for notification of attendance is February 17, 2010.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 1, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–2766 Filed 2–8–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5:30 p.m., March 2, 2010. 8:30 a.m.–2:30 p.m., March 3, 2010.

Place: CDC, Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone (404) 639–8317.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include issues pertaining to regionalization of tuberculosis care; the role of genetics in tuberculosis; tuberculosis control updates from the U.S. affiliated Pacific Islands; tuberculosis research updates; and other related tuberculosis issues.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Margie Scott-Cseh, CDC, 1600 Clifton Road, NE., Mail Stop E–07, Atlanta, Georgia 30333, telephone (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 1, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–2768 Filed 2–8–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 9, 2010.

Closed: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: 12 p.m. to 3:30 p.m.

Agenda: A report of the FIC Director on updates and overviews of new FIC initiatives. Topics to be discussed: New Developments in Chronic Disease Research and Training.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892.(301) 496–1415. *eissr@mail.nih.gov.*

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, drivers license, or passport) and to state the purpose of their visit.

Information is also available on the Institutes/Center's home page: *http://www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: February 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–2559 Filed 2–8–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following meeting:

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Time and Date: 9 a.m.–4:30 p.m., March 9–10, 2010.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its first meeting of the 2010 calendar year cycle on Tuesday and Wednesday March 9–10, 2010. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters to be Discussed: Tentative agenda items include:

March 9, 2010:

- ICD–10 updates: GEMs; Freeze update; ICD–10–CM/ICD–10–PCS updates
- Application of Collagen Based Tissue Sealant Patches
- Biopsy of Soft Tissue Mass
- Central Venous Catheter Placement Using Intra-Atrial Electrocardiographic Guidance
- Circulating Tumor Cell Enumeration, Magnetic
- Closed Chest Intra-cardiac Mitral Valve Repair
- Continuous Glucose Monitoring
- Fat Graft to Breast
- Insertion of Intracranial Neurostimulator Lead(s)
- Internal Fixation of Sternum
- Intralaminar Lumbar Decompression and Laminotomy with Epidurography
- Intra-operative Fluorescence Vascular Angiography (IFVA)
- Laparoscopic Hernia Repair without Mesh
- Thoracoscopic Cardiac Ablation
- Addenda (procedures)

March 10, 2010:

- Acquired absence of joint
- Brain death
- Eaton-Lambert Syndrome
- E. coli infection
- Fluency disorders (stuttering)
- Glaucoma staging
- H1N1 (Swine flu)
- Transfusion transmitted infections
- Uranium exposure
- Addenda (diagnoses)

Contact Person for Additional Information: Amy Blum, Medical Systems Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, e-mail *alb8@cdc.gov*, telephone 301–458–4106 (diagnosis), Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Baltimore, Maryland 21244, e-mail *marilu.hue@cms.hhs.gov*, telephone 410–786–4510 (procedures). **Note:** CMS and NCHS will no longer be providing paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS Web sites prior to the meeting at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage* and *http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm.*

Notice: Because of increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show an official form of picture I.D., (such as a drivers license), and sign-in at the security desk upon entering the building.

Those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the March 9–10, 2010 meeting must submit their name and organization by March 5, 2010 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend. Register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/.*

Notice: This is a public meeting. However, because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting will be closed.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 1, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–2769 Filed 2–8–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0045] (formerly Docket No. 2004N–0408)

Regulatory Site Visit Training Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is announcing an invitation for participation in its Regulatory Site Visit Training Program (RSVP). This training program is intended to give CBER regulatory review, compliance, and other relevant staff an opportunity to visit biologics facilities. These visits are intended to allow CBER staff to directly observe routine manufacturing practices and to give CBER staff a better understanding of the biologics industry, including its challenges and operations. The purpose of this notice is to invite biologics facilities to contact CBER for more information if they are interested in participating in this program.

DATES: Submit a written or electronic request for participation in this program by March 11, 2010. The request should include a description of your facility relative to products regulated by CBER. Please specify the physical address(es) of the site(s) you are offering.

ADDRESSES: If your biologics facility is interested in offering a site visit, you should submit a request to participate in the program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to *http://www.regulations.gov*. If you previously responded to earlier requests to participate in this program and you continue to be interested in participating, please renew your request through a submission to the Division of Dockets Management.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Henderson, Division of Manufacturers Assistance and Training, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, e-mail: *matt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates certain biological products including blood and blood products, vaccines, and cellular, tissue, and gene therapies. CBER is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness and availability of biological products to patients. To support this primary goal, CBER has initiated various training and development programs, including programs to further enhance performance of its compliance staff, regulatory review staff, and other relevant staff. CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing CBER staff with a better understanding of the biologics industry and its operations. Further, CBER seeks to enhance: (1) Its understanding of current industry practices, and regulatory impacts and needs; and (2) communication between CBER staff and industry. CBER initiated its RSVP in 2005, and through these annual notices, is requesting those firms that have previously applied and are still interested in participating, to reaffirm their interest, as well as requesting new interested parties to apply.

II. RSVP

A. Regulatory Site Visits

In this program, over a period of time to be agreed upon with the facility, small groups of CBER staff may observe operations of biologics establishments, including for example, blood and tissue establishments. The visits may include packaging facilities, quality control and pathology/toxicology laboratories, and regulatory affairs operations. These visits, or any part of the program, are not intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but are meant to improve mutual understanding and to provide an avenue for open dialogue between the biologics industry and CBER.

B. Site Selection

All travel expenses associated with the site visits will be the responsibility of CBER. Therefore, selection of potential facilities will be based on the coordination of CBER's priorities for staff training as well as the limited available resources for this program. In addition to logistical and other resource factors to consider, a key element of site selection is a successful compliance record with FDA or another agency with which we have a memorandum of understanding. If a site visit also involves a visit to a separate physical location of another firm under contract to the applicant, the other firm also needs to agree to participate in the program, as well as have a satisfactory compliance history.

III. Requests for Participation

Requests are to be identified with the docket number found in the brackets in the heading of this document. Received requests are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–2758 Filed 2–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3308–EM; Docket ID FEMA–2010–0002]

Oklahoma; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Oklahoma (FEMA–3308–EM), dated January 30, 2010, and related determinations.

DATES: *Effective Date:* January 30, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 30, 2010, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Oklahoma resulting from a severe winter storm beginning on January 28, 2010, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* ("the Stafford Act"). Therefore, I declare that such an emergency exists in the State of Oklahoma.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Oklahoma have been designated as adversely affected by this declared emergency:

All 77 counties of the State of Oklahoma for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–2798 Filed 2–8–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Energy and Mineral Development Program Grants; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to the Office of Management and Budget.

SUMMARY: The Bureau of Indian Affairs (BIA) is submitting the new information collection on the Energy and Mineral Development Program Grants for review and approval as required by the Paperwork Reduction Act. The Office of Management and Budget (OMB) will assign a Control Number.

DATES: Submit comments on or before March 11, 2010.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@ omb.eop.gov.* Please send a copy of your comments to Darryl Francois, Department of the Interior, Office of Indian Energy and Economic Development, Room 20, South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245, fax (202) 208–4564; e-mail: *Darryl.Francois@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Darryl Francois, Department of the Interior, Office of Indian Energy and Economic Development. Telephone (202) 219–0740.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005 authorizes the Secretary of the Interior to provide grants to Indian tribes for energy development. *See* 25 U.S.C. 3502. The Office of Indian Energy and Economic Development (IEED) administers and manages the Energy and Minerals Development Program (EMDP). Congress appropriates funds to EMDP on a year-to-year basis. When funding is available, IEED may solicit proposals for energy and mineral development projects from Indian tribes whose lands are held in trust or restricted fee by the Federal government. Tribes may use the contracting mechanism established by the Indian Self-Determination Act or may receive the grant money through adjustments to their funding from the Office of Self-Governance. *See* 25 U.S.C. 450 *et seq.* The projects may be in the areas of exploration, assessment, development, feasibility, or market studies. Indian tribes that would like to apply for an EMDP grant must submit an application that includes certain information, and must assist IEED by providing information in support of any National Environmental Policy Act (NEPA) analyses. A complete application must contain the following elements.

- A current, signed tribal resolution that: (1) Authorizes the energy and mineral development project for the appropriate fiscal year; (2) describes the commodity or commodities to be studied; (3) states that the tribe is willing to consider developing any potential energy or mineral resources discovered; (4) describes how the tribe prefers to have the energy or mineral program conducted (*i.e.,* through the sole utilization of IEED in-house professional staff, in conjunction with professional tribal staff, through private contractors, or through other appropriate means); and (5) states that the tribe will consider public release of information obtained from the energy and mineral development study upon request from IEED.
- A proposal describing the planned activities and deliverable products that will be accomplished within the fiscal year for which funding is requested, including:
  - Overview, including the elements of the proposed study, reasons why the proposed study is needed, total requested funding, responsible parties for technical exaction and administration, and tribal point of contact for the project;
  - Technical summary of the project, including whether the request will begin a new study or continue a study and the duration of the study, a description of any known energy and/or mineral deposit, reference to any existing mineral exploration information, and a description of any environmental or cultural sensitive areas;
  - Project objective, goals and scope of work;
  - Deliverable products, such as technical data and maps; and
  - Resumes of key personnel.
- A detailed budget estimate, including contracted personnel costs, travel estimates, data collection and analysis costs, and other expenses.

The IEED requires this information to ensure that it provides funding only to

those projects that meet the goals of the EMDP and the purposes for which Congress provides the appropriations.

Once a tribe has been accepted into the EMDP, the tribe must also submit quarterly reports, which are one- or two-page documents summarizing events, accomplishments, problems and/or results in executing the project. Each report is due two weeks after the end of the fiscal quarter.

The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The IEED is proceeding with this public comment period as the first step in obtaining an information collection clearance from OMB. Each clearance request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and recordkeeping requirements.

II. Request for Comments

The IEED requests your comments on this collection concerning: (a) The necessity of this information collection 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 (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0XXX.

Type of Review: New.

Title: Energy and Mineral Development Program Grant Solicitation.

Brief Description of Collection: Indian tribes that would like to apply for an EMDP grant must submit an application that includes certain information. A complete application must contain a current, signed tribal resolution that provides sufficient information to authorize the project and comply with the terms of the grant; a proposal describing the planned activities and deliverable products; and a detailed budget estimate. The IEED requires this information to ensure that it provides funding only to those projects that meet the goals of the EMDP and purposes for which Congress provides the appropriation. Upon acceptance of an application, a tribe must then submit one- to two-page quarterly progress reports summarizing events, accomplishments, problems and/or results in executing the project. Approximately 55 tribes apply each year, but IEED accepts approximately 18 of those applications each year. Response is required to obtain a benefit.

Respondents: Indian tribes with trust or restricted land.

Number of Respondents: 55 applicants per year; 18 project participants each year.

Estimated Time per Response: 40 hours per application; 1.5 hours per progress report.

Frequency of Response: Once per year for applications; 4 times per year for progress reports.

Total Annual Burden to Respondents: 2,308 hours (2,200 for applications and 108 for progress reports).

Dated: February 3, 2010.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2010–2718 Filed 2–8–10; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from November 16 to November 20, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: February 4, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

FLORIDA

Dade County

North Shore Historic District, Roughly by 87th St., Collins Ave., 73rd., and Hawthorne Ave., Miami Beach, 09000926, Listed, 11/18/09, (North Beach Community (1919–1963), MPS)

Nassau County

Nassau County Jail, 233 S. 3rd. St., Fernandina Beach, 09000927, Listed, 11/18/09

IOWA

Linn County

Marion Commercial Historic District, 560–748 10th., 958–1298 7th Ave., 760–96 11th St., 766–76 13th St., 1108 8th Ave., and 969 6th Ave., Marion, 09000930, Listed, 11/18/09, (Iowa's Main Street Commercial Architecture MPS)

LOUISIANA

Ouachita Parish

Bosco Plantation House, 279 Pipes Ln., Monroe vicinity, 09000931, Listed, 11/18/09

MARYLAND

Somerset County

Cullen Homestead Historic District, 4533, 27049, and 27067 Lawson Barnes Rd., Crisfield vicinity, 09000932, Listed, 11/18/09

Somerset County

Glebe House, 10950 Market La., Princess Anne vicinity, 09000933, Listed, 11/18/09

MASSACHUSETTS

Barnstable County

Sears, Jacob, Memorial Library, 23 Center St., Dennis, 09000934, Listed, 11/18/09

Essex County

Asbury Grove Historic District, Around Asbury St., Hamilton, 09000935, Listed, 11/18/09

Middlesex County

Middlesex Canal Historic and Archaeological District, Address Restricted, Boston vicinity, 09000936, Listed, 11/19/09

MISSOURI

St. Louis Independent City

Pevely Dairy Company Plant, 1001 S. Grand, 3626 Chouteau, 1101 Motard, St. Louis, 09000937, Listed, 11/18/09

NEBRASKA

Douglas County

Anderson Building, The, 701 S. 24th St., 2243 Jones, Omaha, 09000938, Listed, 11/20/09, (Apartments, Flats and Tenements in Omaha, Nebraska from 1880–1962)

NEW JERSEY

Cape May County

Flanders, Hotel, The, 719 E. 11th St., Ocean City, 09000939, Listed, 11/20/09

Somerset County

Olcott Avenue Historic District, Portions of Olcott, Childsworth, and Highview Avenues, and Church St., Bernardsville Borough, 09000940, Listed, 11/20/09

NEW YORK

Broome County

Emmanuel Church of the Evangelical Association of Binghamton, 80 Front St., Binghamton, 09000941, Listed, 11/20/09

OREGON

Multnomah County

Keller, Edward H. and Bertha R., House, 3028 NE Alameda St., Portland, 09000943, Listed, 11/20/09

SOUTH DAKOTA

Gregory County

St. Augustine Church, SE. Corner of 6th St. and Main St., Dallas, 09000944, Listed, 11/20/09

Gregory County

St. John's Catholic Church, Section 31 R96W 73N Dickens Township, Dallas vicinity, 09000945, Listed, 11/20/09

Lincoln County

Byrnes House, 525 N. Broadway St., Canton, 09000946, Listed, 11/18/09

Tripp County

Tripp County Veteran's Memorial, 200 E. Third St., Winner, 09000947, Listed, 11/17/09

TENNESSEE

Greene County

Conway Bridge, Briar Thicket Rd./Knob Creek Rd. over the Nolichucky River, Briar Thicket vicinity, 09000948, Listed, 11/20/09

Hamilton County

Engel Stadium, O'Neal St. and E. 3rd St., Chattanooga, 09000954, Listed, 11/19/09

Hamilton County

First Presbyterian Church, 554 McCallie Ave., Chattanooga, 09000955, Listed, 11/18/09

Hamilton County

Jones, Clarence T., Observatory, 10 N. Tuxedo Ave., Chattanooga, 09000949, Listed, 11/20/09

Johnson County

Vaught, Dr. Wiley Wagner, Office, W.W. Vaught Ln., S. of Dug Hill Rd., Mountain City vicinity, 09000950, Listed, 11/20/09

Smith County

Hull, Cordell, Bridge, Cordell Hull Bridge St. over the Cumberland River, Carthage, 09000951, Listed, 11/20/09

TEXAS

McLennan County

Castle Heights Historic District Roughly bounded by Waco Dr. (US 84), Oriental Rd., Franklin Ave., and 39th St., Waco, 07000495, Listed, 11/17/09

VIRGINIA

Norfolk Independent City

Virginia Ice & Freezing Corporation Cold Storage Warehouse, 835 Southampton Ave., Norfolk, 09000922, Listed, 11/13/09

WISCONSIN

Door County

GREEN BAY shipwreck (sloop), Address Restricted, Sevastopol vicinity, 09000952, Listed, 11/18/09, (Great Lakes Shipwreck Sites of Wisconsin MPS)

[FR Doc. 2010–2796 Filed 2–8–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 23, 2010. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 24, 2010 .

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

CALIFORNIA

Los Angeles County

Garment Capitol Building, 217 E. 8th St., Los Angeles, 10000053

IOWA

Lucas County

Chariton Cemetery Historic District, 929 S. Main St., Chariton, 10000054

Story County

Roosevelt School, 921 9th St., Ames, 10000055

MAINE

York County

South Berwick Village Historic District, Portions of Main, Portland, Highland and Academy, South Berwick, 10000058

MASSACHUSETTS

Bristol County

Ingraham, Robert C., School, 80 Rivet St., New Bedford, 10000056

Middlesex County

Groton High School, 145 Main St., Groton, 10000057

NEW YORK

Putnam County

West Point Foundry Archeological Site, Address Restricted, Cold Spring, 10000059

[FR Doc. 2010–2797 Filed 2–8–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10– 020)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Wednesday, February 24, 2010, 12:30 p.m. to 2:30 p.m.

ADDRESSES: Marshall Space Flight Center, Building 4200, Room 504 (5th Floor), Marshall Space Flight Center, AL 35812–0001. (Note that visitors will first need to go to the Marshall Space Flight Center Visitor's Center to gain access.)

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0732.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its 1st Quarterly Meeting for 2010. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include Marshall Space Flight Center Safety Mission Assurance Overview; NASA Safety and Mission Assurance Technical Excellence; Overview of Marshall Space Flight Center Launch Abort System Responsibilities; and Marshall Space Flight Center Industrial Safety, New Initiatives, Proactive Approaches, Specific Safety Issues, Identified Opportunities, and Near Misses.

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Visitors will be requested to sign a visitor's register. Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch at *susan.burch@nasa.gov* at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. All U.S. citizens desiring to attend the Aerospace Safety Advisory Panel meeting at the Marshall Space Flight Center must provide their full name, company affiliation (if applicable), citizenship, place of birth, and date of birth to the Marshall Space Flight Center Protective Services Office no later than close of business on February 17, 2010. All non-U.S. citizens must submit their name; current address; citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. Social Security Number (if applicable); Permanent Resident Alien card number and expiration date (if applicable); place and date of entry into the U.S.; and Passport information to include Country of issue, number, and expiration date to the Marshall Space Flight Center Security Office no later than close of business on February 11, 2010. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the Redstone/Marshall Space Flight Center Joint Visitor Control Center located on Rideout Road, north of Gate 9, prior to entering Marshall Space Flight Center. Please provide the appropriate data, via fax at (256) 544–2101, noting at the top of the page "Public Admission to the ASAP Meeting at MSFC." For security questions, please call Becky Hopson at (256) 544–4541. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: February 2, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–2711 Filed 2–8–10; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0040]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 14 to January 27. The last biweekly notice was published on January 26, 2010 (75 FR 4111).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register**

notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then

submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from February 9, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: November 10, 2009.

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time (CT) for Condition B (i.e., "Two SLC subsystems inoperable") from 8 hours to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises Technical Specification (TS) 3.1.7, "Standby Liquid Control (SLC) System," to extend the completion time (CT) for Condition B (i.e., "Two SLC subsystems inoperable.") from eight hours to 72 hours.

The proposed change is based on a risk-informed evaluation performed in accordance with Regulatory Guides (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions On Plant-Specific Changes to the Licensing Basis," and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications."

The proposed amendment modifies an existing CT for a dual-train SLC system inoperability. The condition evaluated, the action requirements, and the associated CT do not impact any initiating conditions for any accident previously evaluated.

The proposed amendment does not increase postulated frequencies or the analyzed consequences of an Anticipated Transient Without Scram (ATWS). Requirements associated with 10 CFR 50.62 will continue to be met. In addition, the proposed amendment does not increase postulated frequencies or the analyzed consequences or a large-break loss-of-coolant accident for which the SLC system is used for pH control. The new action requirement provides appropriate remedial actions to be taken in response to a dual-train SLC system inoperability while minimizing the risk associated with continued operation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT for Condition B from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. This proposed TS amendment does not change the design function of the SLC system and does not affect the system's ability to perform its design function. The SLC system provides a method to bring the reactor, at any time in a fuel cycle, from full power and minimum control rod inventory to a subcritical condition with the reactor in the most reactive xenon free state without taking credit for control rod movement. Required actions and surveillance requirements are sufficient to ensure that the SLC system functions are maintained. No new accident initiators are introduced by this amendment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment revises TS 3.1.7 to extend the CT for Condition B from eight hours to 72 hours. The proposed amendment does not involve any change to plant equipment or system design functions. The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the setpoints for the actuation of equipment relied upon to respond to an event.

Safety margins applicable to the SLC system include pump capacity, boron concentration, boron enrichment, and system response timing. The proposed amendment does not modify these safety margins or the setpoints at which SLC is initiated, nor does it affect the system's ability to perform its design function. In addition, the proposed change complies with the intent of the defense-in-depth philosophy and the principle that sufficient safety margins are maintained, consistent with RG 1.177 requirements (i.e., Section C, "Regulatory Position," paragraph 2.2, "Traditional Engineering Considerations").

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Stephen J. Campbell.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: November 30, 2009.

Description of amendment request: The proposed changes would use the guidance in Nuclear Regulatory Commission (NRC) Regulatory Issue Summary 2003–18 Supplement 2, "Use of Nuclear Energy Institute (NEI) 99–01, Methodology for Development of Emergency Action Levels," to modify several Ginna Emergency Action Levels based on NEI 99–01. NRC approval, prior to implementation of the proposed change, is being requested pursuant to 10 CFR 50.54(q).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: *Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?*

Response: No.

These changes affect the R.E. Ginna Nuclear Power Plant Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not modify any plant equipment and do not impact any failure modes that could lead to an accident. Additionally, the proposed changes have no effect on the consequence of any analyzed accident since the changes do not affect any equipment related to accident mitigation. Based on this discussion, the proposed amendment does not increase the probability or consequences of an accident previously evaluated.

Criterion 2: *Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?*

Response: No.

These changes affect the R.E. Ginna Nuclear Power Plant Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. They do not modify any plant equipment and there is no impact on the capability of the existing equipment to perform their intended functions. No system set points are being modified and no changes are being made to the method in which plant operations are conducted. No new failure modes are introduced by the proposed changes. The proposed amendment does not introduce accident initiator or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: *Does the proposed amendment involve a significant reduction in a margin of safety?*

Response: No.

These changes affect the R.E. Ginna Nuclear Power Plant Emergency Plan and do not alter any of the requirements of the Operating License or the Technical Specifications. The proposed changes do not affect any of the assumptions used in the accident analysis, nor do they affect any operability requirements for equipment important to plant safety. Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the bases for technical specifications covered in this license amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Group, LLC, 750 East Pratt Street, 17th Floor, Baltimore, MD 21202.

NRC Branch Chief: Nancy L. Salgado.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document

Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 16, 2009, as supplemented by letter dated November 16, 2009.

Description of amendment request: The proposed amendment revised Technical Specification (TS) Section 3.7.D.2 to allow reactor operation to continue, in the event any containment isolation valve becomes inoperable, provided the affected penetration flow path is isolated by the use of at least one closed and de-activated automatic valve, closed manual valve, or blind flange. The corresponding change to TS Section 4.7.D.2 is consistent with NUREG–1433 actions and completion times.

Date of Issuance: January 26, 2010.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 242.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 3, 2009 (74 FR 56886). The supplement letter dated November 16, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 26, 2010.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 26, 2009, as supplemented by letters dated November 4, November 17, November 20, December 9, December 14, December 17, December 28, 2009, and January 11, 2010.

Brief description of amendment: The amendment modifies CPS License Condition 2.B.(6) and create new License Conditions 1.J, 2.B.(7), and 2.C.(25) as part of a pilot program to irradiate Cobalt (Co)-59 target to produce Co-60. In addition to the proposed license condition changes, the amendment would modify Technical Specification 4.2.1, "Fuel Assemblies," to describe the Isotope Test Assemblies being used.

Date of issuance: January 15, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 190.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** December 14, 2009 (74 FR 66159–66163).

The November 20, December 9, December 14, December 17, December 28, 2009, and January 11, 2010 supplements, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 2010.

No significant hazards consideration comments

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP 1), Oswego County, New York

Date of application for amendment: March 3, 2009, as supplemented on December 17, 2009.

Brief description of amendments: The amendment modifies Technical Specification (TS) Section 3.2.1, "Reactor Vessel Heatup and Cooldown Rates," and Section 3.2.2, "Minimum Reactor Vessel Temperature for Pressurization," by replacing the existing reactor vessel heatup and cooldown rate limits and the pressure and temperature limit curves with references to the Pressure and Temperature Limits Report (PTLR). In addition, the amendment adds a new definition for PTLR to TS Section 1.0, "Definitions," and a new section addressing administrative requirements for the PTLR to TS Section 6.0, "Administrative Controls."

Date of issuance: January 21, 2010.

Effective date: As of the date of issuance to be implemented within 30 days of the date of issuance.

Amendment No.: 204.

Renewed Facility Operating License No. DPR–063: The amendment revises the License and TSs.

Date of initial notice in ***Federal Register:*** May 19, 2009 (74 FR 23447). The supplemental letter dated December 17, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 2010.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: October 20, 2009.

Brief description of amendment: The amendment deletes paragraph d of Technical Specification (TS) 5.2.2, "Unit Staff," to eliminate working-hour restrictions in the TS, as similar requirements are sufficiently imposed by Title 10 of the Code of Federal Regulations Part 26, Subpart I.

Date of issuance: January 20, 2010.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 83.

Facility Operating License No. NPF–90: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register:*** November 17, 2009 (74 FR 59264).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 29th day of January 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–2554 Filed 2–8–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0044]

Office of New Reactors; Proposed Revision to Standard Review Plan, Section 14.3.12 on Physical Security Hardware Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," on a proposed Revision 1 to Standard Review Plan (SRP), Section 14.3.12 on "Physical Security Hardware—Inspections, Tests, Analyses, and Acceptance Criteria," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093080140). The Office of Nuclear Security and Incident Response (NSIR) is revising SRP Section 14.3.12 (Enclosure 1), which updates the initial issuance of this section, dated March 2007, to reflect the changes of the recently issued Title 10 of the Code of Federal Regulations, Part 73, Power Reactor Security Rule (published in the **Federal Register** (FR) on March 27, 2009 (74 FR 13926)). The previous version of this SRP section was published in March 2007 as an initial issuance (ADAMS Accession No. ML070660628). A redline version tracking the proposed changes under this revision (Revision 1) can be found at ADAMS Accession No. ML100040153.

The NRC staff issues notices to facilitate timely implementation of the current staff guidance and to facilitate activities associated with the review of amendment applications and review of design certification (DC) and combined license (COL) applications for the Office of New Reactors (NRO). The NRC staff intends to incorporate the final approved guidance into the next revision of NUREG–0800, SRP Section 14.3.12 and Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants (LWR Edition)," June 2007.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register.** Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID: NRC–2010–0044 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking website at *http://www.Regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID: NRC–2010–0044. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail at *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section 14.3.12, Revision 1. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Section 14.3.12.

Dated at Rockville, Maryland, this 28th day of January 2010.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–2780 Filed 2–8–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act Meeting Notice

DATES: Weeks of February 8, 15, 22, March 1, 8, 15, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 8, 2010

Tuesday, February 9, 2010

9:30 a.m. Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting). (*Contact:* Richard Barkley, 610–337–5065.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 15, 2010—Tentative

Thursday, February 18, 2010

9:30 a.m. Briefing on Office of Nuclear Regulatory Research—Programs, Performance, and Future Plans (Public Meeting). (*Contact:* Patricia Santiago, 301–251–7982.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 22, 2010—Tentative

Tuesday, February 23, 2010

9:30 a.m. Briefing on Decommissioning Funding (Public Meeting). (*Contact:* Thomas Fredrichs, 301–415–5971.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 1, 2010—Tentative

Tuesday, March 2, 2010

9:30 a.m. Briefing on Uranium Recovery (Public Meeting). (*Contact:* Dominick Orlando, 301–415–6749.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 8, 2010—Tentative

There are no meetings scheduled for the week of March 8, 2010.

Week of March 15, 2010—Tentative

Tuesday, March 16, 2010

1:30 p.m. Joint Meeting of the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission on Grid Reliability (Public Meeting). (*Contact:* Kenn Miller, (301) 415–3152.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: February 4, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–2964 Filed 2–5–10; 4:15 pm]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/75–0257]

Cardinal Growth, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Cardinal Growth, L.P., 311 South Wacker Driver, Suite 5500, Chicago, IL 60606, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Cardinal Growth, L.P. provided financing to GreenRock Environmental Management, Inc., 1400 West Carroll Avenue, Chicago, IL 60607. The financing was used to purchase office and computer related equipment for the small business.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because the CEO of GreenRock Environmental Management, Inc. assumed financial responsibilities at Cardinal Growth, L.P. within 6 months of the financing. According to the definition of Associate in § 107.50, Section 10 if an Associate relationship exists at any time within 6 months before or after the date of a Financing, then the Associate relationship is considered to exist on the date of the Financing.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: January 6, 2010.

Sean Greene,

Associate Administrator for Investment.

[FR Doc. 2010–2717 Filed 2–8–10; 8:45 am]

BILLING CODE P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Consumer Interface With the Smart Grid

AGENCY: Office of Science and Technology Policy (OSTP), Executive Office of the President.

ACTION: Notice; request for public comment.

SUMMARY: With this notice, the Office of Science and Technology Policy (OSTP) within the Executive Office of the President requests input from the public regarding the consumer interface with the modernized electric grid ("Smart Grid"), which is a vital component of the President's comprehensive energy plan. In particular, we seek comments on issues related to Smart Grid implementation options, including the ways in which each option would support open innovation in home energy services. This Request for Information (RFI) will be active from February 10, 2010 to February 19, 2010. Respondents are invited to respond online via the Smart Grid Forum at *http://blog.ostp.gov/category/smart-grid,* or may submit responses via electronic mail. Electronic mail responses will be re-posted on the online forum. Instructions are provided at *http://blog.ostp.gov/category/smart-grid.*

DATES: Comments must be received by 5 p.m. EST on February 19, 2010.

ADDRESSES: Submit comments by one of the following methods:

- *Smart Grid Forum: http://blog.ostp.gov/category/smart-grid.*
- *Via E-mail: smartgrid@ostp.gov.*
- *Mail:* Office of Science and Technology Policy, Attn: Open Government Recommendations, 725 17th Street, Washington, DC 20502.

Comments submitted in response to this notice may be made available to the public online or by alternative means. For this reason, *please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information.* If you submit an e-mail comment, your e-mail address will be captured automatically and included as part of the comment that is placed in the public docket and made available on the Internet.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Hurst, Assistant Director for Energy Technology, Office of Science and Technology Policy, Executive Office of the President, Attn: Open Government, 725 17th Street, NW., Washington, DC 20502, 202–456–7116.

SUPPLEMENTARY INFORMATION:

I. Background

Modernization of the Nation's electric grid is a vital component of the President's comprehensive energy plan, which aims to reduce U.S. dependence on foreign oil, create jobs, and help U.S. industry compete successfully in global markets for clean energy technology.

Seventy-two percent of the Nation's electricity is consumed in buildings, and nearly half of that is in homes. Optimizing building energy consumption, especially during peak load periods, can improve the reliability, security, and efficiency of the electric grid while reducing energy costs to consumers. The "Smart Grid"—a modernized electricity transmission and distribution system involving the increased use of digital information and controls technology—can help to realize these benefits. Demand-side Smart Grid technologies include "smart meters" (which provide two-way, near-real-time data communications between the utility and consumer premises), "smart appliances" (which provide data communications and control options), and "smart interfaces" that can integrate distributed energy resources, demand response resources, or other energy loads and storage devices such as plug-in electric and hybrid electric vehicles.

The Smart Grid will help to provide consumers with the information, automation, and tools they need to control and optimize energy use. This control and optimization requires interoperability and information exchange between the grid and a wide variety of energy-using devices and controllers, such as thermostats, water heaters, appliances, consumer electronics, and energy management systems. The Department of Energy (DOE) Smart Grid Investment Grant program, funded by the American Recovery and Reinvestment Act, is accelerating deployment of smart meters and other components of an advanced electric grid.

In many instances, smart meters will have the capability to communicate near-real-time measurements of electricity usage to the utility and the consumer. In some implementations, data can be provided to the consumer directly from the smart meter (or another monitoring device) through an in-home display or energy management system via a local communications interface. In other implementations, consumers or their authorized agents can obtain their usage data via the internet from an information system at the utility.

One of the goals of the Smart Grid is to enable innovation and competition in new products and services that can help consumers minimize both peak and overall energy usage and save money. To be most effective, the Smart Grid will need to provide not only usage data but also information such as electricity price data and demand response signals to the consumer and energy-using devices in the home. This information could be provided to the consumer's home devices either through the smart meter's local communication interface or through a separate gateway, provided either by the utility or a third-party service provider. In order to clarify the various implementation options, we seek comments on issues related to the demand-side Smart Grid architecture, including potential costs, benefits, implementation hurdles, and the ways in which each option would support open innovation in home energy services.

A robust, secure, and flexible architecture based on open standards is needed for information exchange between the home and the Smart Grid. Section 1305 of the Energy Independence and Security Act of 2007 advises that the Smart Grid interoperability framework be designed to "* * * consider the use of voluntary uniform standards for certain classes of mass-produced electric appliances and equipment for homes and businesses that enable customers, at their election and consistent with applicable State and Federal laws, and are manufactured with the ability to respond to electric grid emergencies and demand response signals" * * *. The diversity of communications technologies and standards used by devices in the home presents a significant challenge to achieving interoperability. A balance must be struck between maximizing innovation and customer choice, while ensuring reliability and a sufficiently standardized environment so that manufacturers can produce cost-effective Smart Grid-enabled appliances that work anywhere in the Nation. That balance must also include the need for cost-effective Smart Grid infrastructure. In addition, ensuring cyber security in the home-to-grid interface is a critical consideration.

The Smart Grid must provide benefits to a wide variety of consumers. Some consumers who have many energy-using appliances and devices may wish to have the grid interoperate with an existing home area network and a sophisticated home energy management system. Other consumers with simpler circumstances may not have the desire, skill, or means to configure a home area network and may simply wish to plug in a new, Smart-Grid-enabled appliance and have it automatically communicate with the grid in order to realize energy-saving benefits. The diversity of consumer needs must be considered in the design and deployment of Smart Grid infrastructure and devices.

The Executive Branch is considering ways to ensure that the consumer interface to the Smart Grid achieves the desired goal of providing all consumers with the information they need to control and optimize their energy use in a manner that ensures ease of use, widespread adoption, and innovation. The National Institute of Standards and Technology (NIST), pursuant to the Energy Independence and Security Act of 2007, recently published the first release of an interoperability framework for the Smart Grid (NIST Special Publication 1108, available at *http://www.nist.gov/public_affairs/releases/smartgrid_interoperability_final.pdf*), which includes discussion of these issues and identifies the need for further work to provide solutions.

II. Invitation To Comment

Input is welcome on issues related to the architecture of the consumer interface with the Smart Grid as well as consumer ownership of Smart Grid data. Questions that individuals may wish to address include, but are not limited to the following. As part of your submission, please indicate the question to which your answer responds.

1. Should the smart meter serve as the primary gateway for residential energy usage data, price data, and demand response signals? What are the most important factors in making this assessment, and how might those factors change over time?

2. Should a data gateway other than the smart meter be used for all or a subset of the data described in question 1?

3. If the smart meter, via the utility network, is the primary gateway for the data described in question 1, will consumers and their authorized third-party service providers be able to access the data easily and in real time?

4. Who owns the home energy usage data? Should individual consumers and their authorized third-party service providers have the right to access energy usage data directly from the meter?

5. How are low-income consumers best served by home-to-grid technology?

6. What alternative architectures involving real-time (or near-real-time) electricity usage and price data are there that could support open innovation in home energy services?

Please note that several important Smart Grid topics—including Federal and State policy hurdles, appliance interoperability standards, cyber security, and business case challenges—are beyond the scope of this request, except insofar as they bear on the primary topics identified above. One or more future requests for comment may be organized to obtain input on these additional issues. Discussions of all of the above topics are also ongoing in

several forums, including the Smart Grid Interoperability Panel established by NIST and the GridWise Architecture Council established by DOE. Relevant input received through this request will be shared with NIST, DOE, and other interested Federal agencies.

M. David Hodge,

Operations Manager.

[FR Doc. 2010–2813 Filed 2–8–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–7; OMB Control No. 3235– 0383; SEC File No. 270–331.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F–7 (17 CFR 239.37) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) used to register securities that are offered for cash upon the exercise of rights that are granted to a registrant's existing security holders to purchase or subscribe such securities. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Form F–7 takes approximately 4 hours per response to prepare and is filed by approximately 5 respondents. We estimate that 25% of 4 hours per response (one hour) is prepared by the company for a total annual reporting burden of 5 hours (one hour per response × 5 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2735 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 18–K; OMB Control No. 3235–0120; SEC File No. 270–108.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 18–K (17 CFR 249.318) is an annual report form used by foreign governments and political subdivisions that have securities listed on a U.S. securities exchange. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. The information provided is mandatory. Form 18–K is a public document. Form 18–K takes approximately 8 hours to prepare and is filed by approximately 143 respondents for a total annual reporting burden of 1,144 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2736 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extensions:

Rule 12d1–3; OMB Control No. 3235–0109; SEC File No. 270–116.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Exchange Act Rule 12d1–3 (17 CFR 240.12d1–3) requires a certification that a security has been approved by an exchange for listing and registration pursuant to Section 12(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(d)) to be filed with the Commission. The information required under Rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes approximately one-half hour to provide the information required under Rule 12d1–3 and that the information is filed by approximately 688 respondents annually for a total annual reporting burden of 344 burden hours (.5 hours per response × 688 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2741 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Schedule 13E–4F; OMB Control No. 3235–0375; SEC File No. 270–340.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Schedule 13E–4F (17 CFR 240.13e–102) may be used by an issuer that is incorporated or organized under the laws of Canada to make a cash tender or exchange offer for the issuer's own securities and less than 40 percent of the securities are held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Schedule 13E–4F and that the information is filed by approximately 3 respondents annually for a total annual reporting burden of 6 hours (2 hours per response × 3 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2738 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–X, OMB Control No. 3235–0379, SEC File No. 270–336.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F–X (17 CFR 239.42) is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 under the Securities Act of 1933 (U.S.C. 77a *et seq.*), or filing periodic reports on Form 40–F under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The information collected must be filed with the Commission and is publicly available. We estimate that it takes approximately 2 hours per response to prepare Form F–X and that the information is filed by approximately 161 respondents for a total annual reporting burden of 322 hours (2 hours per response × 161 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 1, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2737 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29128; 812–13658–01]

U.S. One, Inc. and U.S. One Trust; Notice of Application

February 2, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

APPLICANTS: U.S. One, Inc. (the "Advisor") and U.S. One Trust (the "Trust").

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; and (c) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection

with the purchase and redemption of Creation Units.

FILING DATES: The application was filed on May 20, 2009, and amended on September 28, 2009, and February 1, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 26, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: P.O. Box 17073, Reno, NV 89511.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a statutory trust established under the laws of Delaware, is registered with the Commission as an open-end management investment company. The Trust is organized as a series investment company with one initial series (the "Initial Fund"). The investment objective of the Initial Fund will be to provide capital appreciation. The Initial Fund and all future series of the Trust ("Future Funds," collectively with the Initial Fund, "Funds") will attempt to achieve their investment objectives by utilizing an active management strategy. Each Fund's investment objective, policies and investment strategies will be fully disclosed in the Fund's prospectus ("Prospectus") [1] and statement of additional information ("SAI"). Each Fund will primarily hold shares of underlying exchange-traded funds ("ETFs"), as well as shares of certain exchange-traded products that are not registered as investment companies under the Act.[2] Applicants will only invest in unaffiliated ETFs that have received certain exemptive relief from the Commission to permit such investments in excess of the limits of section 12(d)(1)(A) and (B) of the Act. Any Future Fund (a) will be advised by the Advisor or an entity controlled by or under common control with the Advisor, and (b) will comply with the terms and conditions stated in the application.[3]

2. The Advisor, a Nevada corporation, or a subsidiary of such company, will serve as the investment adviser to each Fund. The Advisor, or its subsidiary, if applicable, will be registered as an investment adviser of the Investment Advisers Act of 1940 ("Advisers Act") prior to any Fund beginning operations. Applicants anticipate that Funds also may engage subadvisors ("Subadvisors"). Any Subadvisor will be registered under the Advisers Act.

3. Applicants anticipate that shares of the Funds ("Shares") will be sold at a price of between $25 and $200 per Share in Creation Units of 50,000 or more Shares. All orders to purchase Creation Units must be placed with the principal underwriter and distributor of the Creation Units ("Distributor") by or through a party that has entered into a participant agreement with the Distributor ("Authorized Participant"). Authorized Participants will include broker-dealers, banks, trust companies, and clearing companies that are participants in the Depository Trust Company ("DTC," and such participants, "DTC Participants"). Purchases of Creation Units of the Funds will be made generally by means of an in-kind tender of shares of specified ETFs (the "Deposit Securities"), with any cash portion of the purchase price (the "Cash Amount") to be kept to a minimum. The Cash Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities. The Trust reserves the right to permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. The Trust may in the future determine that Shares of one or more Funds may be purchased in Creation Units on a cash-only basis if the Trust and the Advisor believe such method would substantially minimize the Trust's transactional costs or enhance its operational efficiencies.

4. Each Fund will charge a fee ("Transaction Fee") in connection with the sale or redemption of Creation Units to protect existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. Each purchaser of a Creation Unit will receive a Prospectus that contains complete disclosure about the Transaction Fee. All orders to purchase Creation Units must be placed with the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4 p.m. ET) in order for the purchaser to receive the NAV determined on that date. The Distributor will transmit all purchase orders to the relevant Fund and will also maintain a record of Creation Unit purchases, send out confirmations of such purchases, and furnish a Prospectus to purchasers of Creation Units.

5. The Trust intends to list the Shares of each Fund on a national securities exchange ("Listing Market") such as the NYSE. It is expected that one or more member firms will be designated to act as a specialist or market maker and maintain a market for the Shares trading on the Listing Market ("Market Makers"). The price of Shares trading on the Listing Market will be based on a current bid/offer market. No secondary sales will be made to brokers or dealers at a concession by the Distributor or by a Fund. Purchases and sales of Shares in the secondary market, which will not involve a Fund, will be subject to customary brokerage commissions and charges.

6. Purchasers of Shares in Creation Units may hold such Shares or may sell them into the secondary market. Applicants expect that purchasers of Creation Units will include institutional

[1] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[2] The Funds may invest in exchange-traded products that invest primarily in commodities or currency, but otherwise operate in a manner similar to exchange-traded products registered under the Act. In addition, the Funds may also invest in equity securities or fixed income securities traded in a U.S. or non-U.S. markets. Neither the Initial Funds nor any Future Fund will invest in options contracts, futures contracts, or swap agreements. The Funds may also invest in equity securities or fixed income securities traded in international markets or in a combination of equity, fixed income and U.S. money market securities and/or non-U.S. money market securities.

[3] All existing entities that currently intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application.

investors and arbitrageurs, who will purchase or redeem Creation Units of a Fund in pursuit of arbitrage profit and thereby enhance the liquidity of the secondary market and keep the market price of shares close to their NAV. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors for whom Shares will provide a useful, retail-priced, exchange-traded mechanism for investing in a professionally managed, diversified selection of ETFs.[4]

7. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from a Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. A redeeming investor will receive a basket of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted ("Redemption Securities"), which in most cases will be the same as the Deposit Securities required to purchase Creation Units on that date, and will either receive from or pay to the Fund an amount calculated in the same manner as the Cash Amount ("Cash Redemption Payment").[5] A Fund may make redemptions partly in cash in lieu of transferring one or more Redemption Securities to a redeeming investor if the Fund determines that such alternative is warranted, such as if the redeeming investor is unable, by law or policy, to own a particular Redemption Security. A redeeming investor also must pay a Transaction Fee to cover custodial costs.

8. The Trust will not be advertised or marketed or otherwise "held out" as a traditional open-end investment company or a mutual fund. The designation of the Trust and the Funds in all marketing materials will be limited to the terms "exchange-traded fund," "investment company," "fund" and "trust" without reference to an "open-end fund" or a "mutual fund," except to compare and contrast the Trust and the Funds with traditional mutual funds. Each Fund's Prospectus will also prominently disclose that the Fund is an actively managed exchange-traded fund. All marketing materials that describe the method of obtaining, buying or selling Creation Units, or Shares traded on the Listing Market, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire or redeem Shares from a Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

9. The Trust (or the Listing Market) intends to maintain a Web site that will be publicly available at no charge, which will include the Prospectus and other information about the Funds that is updated on a daily basis. On each Business Day, before the commencement of trading in Shares on the Listing Market, each Fund will disclose the identities and weightings of the securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[6]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund, as a series of an open-end management investment company, to issue Shares that are redeemable in Creation Units only. Applicants state that Creation Units will always be redeemable. Applicants further state that because Creation Units may always be purchased and redeemed at NAV (less certain transactional expenses), the price of Creation Units on the secondary market and the price of the individual Shares of a Creation Unit, taken together, should not vary substantially from the NAV of Creation Units.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that trading in Shares will take place on and away from the Listing Market at all times on the basis of current bid/offer prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that

[4] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

[5] Applicants state the Cash Redemption Payment may differ if the Redemption Securities are not identical to the Deposit Securities on that day.

[6] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T + 1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) Prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) assure an orderly distribution of investment company shares by contract dealers by eliminating price competition from non-contract dealers who could offer investors shares at less than the published sales price and who could pay investors a little more than the published redemption price.

6. Applicants believe that none of these purposes will be relevant issues for secondary trading by dealers in Shares of a Fund. Applicants state that (a) secondary market trading in Shares will not cause dilution for owners of such Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, but do not occur as a result of unjust or discriminatory manipulation. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace should ensure that the difference between the market price of Shares and their NAV remains narrow.

Sections 17(a)(1) and 17(a)(2) of the Act

7. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person ("second tier affiliate"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an "Affiliated Fund"). Applicants state that an investor could own 5% or more of a Fund or the Trust, or in excess of 25% of the outstanding Shares of a Fund or the Trust, making that investor an affiliated person of the Fund or the Trust under section 2(a)(3)(A) or 2(a)(3)(C) of the Act. For so long as such an investor was deemed to be an affiliated person, section 17(a)(1) could be read to prohibit that investor from depositing the Deposit Securities with a Fund in return for a Creation Unit. Similarly, section 17(a)(2) could be read to prohibit such an investor from entering into an in-kind redemption with a Fund.

8. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) holding 5% or more, or more than 25%, of the outstanding Shares of the Trust or one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

9. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons or second tier affiliates of a Fund as described above from purchasing or redeeming Creation Units through "in-kind" transactions. The purchase and redemption of Creation Units of each Fund is on the same terms for all investors, whether or not such investor is an affiliate. In each case, Creation Units are sold and redeemed by the Trust or a Fund at their NAV. The Deposit Securities and Redemption Securities will be valued in the same manner as the securities in the Fund portfolio. Accordingly, applicants believe the proposed transactions described above meet the section 17(b) standards for relief because the terms of such proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transactions will be consistent with the policies of each Fund and with the general purposes of the Act.

Applicants' Conditions

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:[7]

1. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an actively managed exchange-traded fund. Each Prospectus also will prominently disclose that Shares are not individually redeemable shares and will disclose that owners of Shares may acquire those Shares from a Fund and tender those Shares to a Fund for redemption in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

2. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by a registered investment company, and that the acquisition of Shares by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act.

3. The Web site for the Funds, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of the closing price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

4. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 3(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years (or for the life of the Fund, if shorter), and (b) the cumulative total return and the average annual total return based on NAV and closing price, calculated on a per Share basis for one-, five- and ten-year periods (or life of the Fund, if shorter).

5. As long as a Fund operates in reliance on the requested order, its Shares will be listed on a Listing Market.

6. On each Business Day, before commencement of trading in Shares on a Fund's Listing Market, the Fund will disclose on its Web site the identities and weightings of the component securities and other assets held by the

[7] *See* note 1, *supra.*

Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Advisor or any Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.

8. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2749 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61470; File No. SR–ISE–2010–09]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add 75 Options Classes to the Penny Pilot Program

February 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to designate an additional 75 options classes to be added to the pilot program to quote and to trade certain options in pennies (the "Penny Pilot") on February 1, 2010.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to identify the next 75 options classes to be added to the Penny Pilot effective February 1, 2010. The Exchange recently filed to extend and expand the Penny Pilot through December 31, 2010.[3] In that filing, the Exchange had proposed expanding the Penny Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.[4]

ISE proposes to add the following 75 options classes to the Penny Pilot on February 1, 2010, based on national average daily volume for the six months ending December 31, 2009:

Symbol	Company name
ABT	Abbott Laboratories.
AEM	Agnico-Eagle Mines Ltd.
AET	Aetna Inc.
AFL	Aflac Inc.
AKAM	Akamai Technologies Inc.
AMAT	Applied Materials Inc.
AMR	AMR Corp.
ANF	Abercrombie & Fitch Co.
APC	Anadarko Petroleum Corp.
ATVI	Activision Blizzard Inc.
BBD	Banco Bradesco SA.
BCRX	BioCryst Pharmaceuticals Inc.
BK	Bank of New York Mellon Corp.
BRCM	Broadcom Corp.
BTU	Peabody Energy Corp.
BX	Blackstone Group LP.
CAL	Continental Airlines Inc.
CF	CF Industries Holdings Inc.
CMCSA	Comcast Corp.
CSX	CSX Corp.
CVS	CVS Caremark Corp.
CX	Cemex SAB de CV.
DD	EI du Pont de Nemours & Co.
ERTS	Electronic Arts Inc.
EWJ	iShares MSCI Japan Inde Fund.
FDX	FedEx Corp.
FNM	Federal National Mortgage Association.
FRE	Federal Home Loan Mortgage Corp.
GILD	Gilead Sciences Inc.
GLW	Corning Inc.
HBC	HSBC Holdings PLC.
HES	Hess Corp.
HL	Hecla Mining Co.
HOG	Harley-Davidson Inc.
HON	Honeywell International Inc.
JOYG	Joy Global Inc.
JWN	Nordstrom Inc.
KFT	Kraft Foods Inc.
LEAP	Leap Wireless International Inc.
LLY	Eli Lilly & Co.
LO	Lorillard Inc.
LOW	Lowe's Cos Inc.
M	Macy's Inc.
MCO	Moody's Corp.
MET	MetLife Inc.
MMM	3M Co.
MU	Micron Technology Inc.
NUE	Nucor Corp.
OXY	Occidental Petroleum Corp.
PARD	Poniard Pharmaceuticals Inc.
PEP	PepsiCo Inc/NC.
PM	Philip Morris International Inc.
PNC	PNC Financial Services Group Inc.
QID	ProShares UltraShort QQQ.
SHLD	Sears Holdings Corp.
SLM	SLM Corp.
SLW	Silver Wheaton Corp.
SQNM	Sequenom Inc.
STEC	STEC Inc.
STX	Seagate Technology Inc.
SU	Suncor Energy Inc.
TCK	Teck Resources Ltd.
TEVA	Teva Pharmaceutical Industries Ltd.
TLT	iShares Barclays 20+ Year Treasury Bond Fund.
TZA	Direxion Daily Small Cap Bear 3X Shares.
UAUA	UAL Corp.
URE	ProShares Ultra Real Estate.
UTX	United Technologies Corp.
WFR	MEMC Electronic Materials Inc.
WFT	Weatherford International Ltd.
WLP	WellPoint Inc.
XLB	Materials Select Sector SPDR Fund.
XRX	Xerox Corp.
XTO	XTO Energy Inc.
YRCW	YRC Worldwide Inc.

[3] *See* Securities Exchange Act Release No. 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009) (SR–ISE–2009–82).

[4] Index products would be included in the expansion if the underlying index level was under 200.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is

found in Section 6(b)(5) of the Act,[5] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change identifies the options classes to be added to the Penny Pilot in a manner consistent with prior rule changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act[6] and Rule 19b–4(f)(1) thereunder,[7] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2010–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2010–09 and should be submitted on or before March 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2733 Filed 2–8–10; 8:45 am]

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[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61473; File No. SR–FINRA–2009–087]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal NASD Rules 2760 and 2780, Incorporated NYSE Rules 2B and 411, and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as Part of the Process of Developing the Consolidated FINRA Rulebook

February 2, 2010.

On December 4, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to repeal NASD Rule 2760 (Offerings "At the Market"), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on December 29, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[4] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61211 (December 18, 2009), 74 FR 68889. ("Notice").

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to eliminate confusion and reduce regulatory overlap by repealing rules that are similar to federal rules and regulations or are specific to the NYSE and its marketplace. As further described in the Notice, FINRA stated that NASD Rule 2760 is similar to the Commission's Rule 15c1–8 under the Act,[6] which FINRA believes appropriately protects investors without duplication by NASD Rule 2760. FINRA also stated that NASD Rule 2780 duplicates the Commission's Rule 10b–2, which was rescinded by the Commission in 1993 because it was duplicative of other provisions of the federal securities laws, including the Commission's Regulation M.[7] Therefore, FINRA believes that NASD Rule 2780 should be deleted. In addition, FINRA stated that NYSE Rules 2B and 411 and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) relate to activity that concerns solely the NYSE marketplace and, in the case of Rule 411(b)(2), is duplicative of existing Commission recordkeeping requirements. Thus, FINRA believes that these Incorporated NYSE Rules and Interpretation should not be included in the consolidated FINRA rulebook. In approving this proposed rule change, the Commission notes that FINRA members and their associated persons are required to comply with all applicable federal securities laws and that FINRA, as a self-regulatory organization, has the obligation to have the capacity to enforce compliance by its members and their associated persons with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] proposed rule change (SR–FINRA–2009–087) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2734 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 240.15c1–8.

[7] *See* Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–61474; File No. SR–NSX–2010–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NSX Fee and Rebate Schedule To Increase the Rebate for Liquidity Adding Displayed Orders of Securities Priced Under One Dollar in the Auto Execution Mode of Order Interaction to 0.25% of Trade Value

February 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing a rule change, operative at commencement of trading on February 1, 2010, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") to increase the rebate for liquidity adding displayed orders of securities priced under one dollar in the Auto Execution mode of order interaction ("AutoEx") [3] to 0.25% of trade value.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule to increase the rebate for liquidity adding displayed orders of securities priced under one dollar in AutoEx to 0.25% of trade value.

The current Fee Schedule provides a rebate in AutoEx of 0.10% of trade value (except for Zero Display Orders [4]) with respect to transactions in securities priced under one dollar. The term "trade value" means a dollar amount equal to the price per share multiplied by the number of shares executed.[5] The instant rule filing proposes to increase such rebate from 0.10% of trade value to 0.25% of trade value. Zero Display Orders remain excluded from this rebate program. The proposed rule change would not modify other rebates or fees that are included in the Fee Schedule.

Rationale

The Exchange has determined that this change is necessary to create further incentive for ETP Holders to submit increased volumes of liquidity providing displayed orders of sub-dollar securities in AutoEx and, ultimately, to increase the revenues of the Exchange for the purpose of continuing to adequately fund its regulatory and general business functions. The Exchange has further determined that the proposed fee adjustment is necessary for competitive reasons. The Exchange believes that this rebate change will not impair its ability to carry out its regulatory responsibilities.

The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide liquidity adding displayed orders of securities priced under one dollar in AutoEx, and is not discriminatory because ETP Holders are free to elect whether or not to send liquidity adding displayed orders for sub-dollar securities in AutoEx. In addition, the proposed modification will tend to further incentivize ETP Holders to submit displayed orders over Zero

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[4] "Zero Display Orders" as used herein and in the Fee Schedule means "Zero Display Reserve Orders" as specified in NSX Rule 11.11(c)(2)(A).

[5] *See* Explanatory Endnote (6) to the Fee Schedule.

Display Orders in AutoEx. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed modifications, which are effective on filing of this proposed rule, operative for trading on February 1, 2010. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed rule change is not discriminatory in that all ETP Holders are eligible to submit (or not submit) trades and quotes at any price in AutoEx in all tapes, as either displayed or undisplayed, and as liquidity adding or liquidity taking, and may do so at their discretion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2010–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2010–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2010–01 and should be submitted on or before March 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2740 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61471; File No. SR–NYSEAmex–2010–06]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes to the Penny Pilot Program

February 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2010, NYSE Amex LLC (the "NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to identify the next 75 options classes to be added to the Penny Pilot Program for Options ("Penny Pilot" or "Pilot") on November 2, 2009 [sic].[3] There are no changes to the Rule text. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room and on the Commission's Web site at *http://www.sec.gov.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the form 19b–4 correctly notes that the 75 new classes were added to the Penny Pilot on February 1, 2010.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex proposes to identify the next 75 options classes to be added to the Penny Pilot effective February 1, 2010. The Exchange recently filed to extend and expand the Pilot through December 31, 2010.[4] In that filing, the Exchange had proposed expanding the Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six-months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.[5]

Nat'l ranking	Symbol	Company name	Nat'l ranking	Symbol	Company name
131	ABT	Abbott Laboratories.	192	LEAP	Leap Wireless International Inc.
169	AEM	Agnico-Eagle Mines Ltd.	205	LLY	Eli Lilly & Co.
151	AET	Aetna Inc.	162	LO	Lorillard Inc.
156	AFL	Aflac Inc.	152	LOW	Lowe's Co.s Inc.
181	AKAM	Akamai Technologies Inc.	176	M	Macy's Inc.
178	AMAT	Applied Materials Inc.	155	MCO	Moody's Corp.
117	AMR	AMR Corp.	217	MET	MetLife Inc.
166	ANF	Abercrombie & Fitch Co.	187	MMM	3M Co.
172	APC	Anadarko Petroleum Corp.	140	MU	Micron Technology Inc.
209	ATVI	Activision Blizzard Inc.	177	NUE	Nucor Corp.
145	BBD	Banco Bradesco SA.	157	OXY	Occidental Petroleum Corp.
190	BCRX	BioCryst Pharmaceuticals Inc.	158	PARD	Poniard Pharmaceuticals Inc.
218	BK	Bank of New York Mellon Corp./The.	150	PEP	PepsiCo. Inc./NC.
194	BRCM	Broadcom Corp.	141	PM	Philip Morris International Inc.
184	BTU	Peabody Energy Corp.	185	PNC	PNC Financial Services Group Inc.
144	BX	Blackstone Group LP.	216	QID	ProShares UltraShort QQQ.
200	CAL	Continental Airlines Inc.	149	SHLD	Sears Holdings Corp.
211	CF	CF Industries Holdings Inc.	175	SLM	SLM Corp.
142	CMCSA	Comcast Corp.	212	SLW	Silver Wheaton Corp.
203	CSX	CSX Corp.	215	SQNM	Sequenom Inc.
143	CVS	CVS Caremark Corp.	153	STEC	STEC Inc.
174	CX	Cemex SA.B de CV.	219	STX	Seagate Technology.
183	DD	EI du Pont de Nemours & Co.	202	SU	Suncor Energy Inc.
146	ERTS	Electronic Arts Inc.	207	TCK	Teck Resources Ltd.
121	EWJ	iShares MSCI Japan Index Fund.	196	TEVA	Teva Pharmaceutical Industries Ltd.
186	FDX	FedEx Corp.	135	TLT	iShares Barclays 20+ Year Treasury Bond Fund.
118	FNM	Federal National Mortgage Association.	214	TZA	Direxion Daily Small Cap Bear 3X Shares.
182	FRE	Federal Home Loan Mortgage Corp.	168	UAUA	UAL Corp.
179	GILD	Gilead Sciences Inc.	154	URE	ProShares Ultra Real Estate.
198	GLW	Corning Inc.	180	UTX	United Technologies Corp.
170	HBC	HSBC Holdings PLC.	204	WFR	MEMC Electronic Materials Inc.
197	HES	Hess Corp.	115	WFT	Weatherford International Ltd.
161	HL	Hecla Mining Co.	165	WLP.	WellPoint Inc.
193	HOG	Harley-Davidson Inc.	191	XLB	Materials Select Sector SPDR Fund.
206	HON	Honeywell International Inc.	173	XRX	Xerox Corp.
210	JOYG	Joy Global Inc.	148	XTO	XTO Energy Inc.
213	JWN	Nordstrom Inc.	130	YRCW	YRC Worldwide Inc.
137	KFT	Kraft Foods Inc.			

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes added to the Pilot in a manner consistent with prior approvals and filings.

[4] *See* Exchange Act Release No. 61106 (December 3, 2009) 74 FR 65193 (December 9, 2009).

[5] Index products would be included in the expansion if the underlying index level was under 200.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Exchange Act [6] and Rule 19b–4(f)(1) thereunder,[7] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at NYSE Amex's principal office and on its Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2010–06 and should be submitted on or before March 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2739 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61486; File No. SR–Phlx–2010–18]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change To Codify Prices for Co-Location Services

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 29, 2010, NASDAQ OMX PHLX ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ OMX PHLX is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to codify pricing for co-location services. The text of the proposed rule change is available at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office, and at the Commission's Public Reference Room. The Exchange will implement the proposed rule change on the first day of the month immediately following Commission approval (or on the date of approval, if on the first business day of a month).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allow market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. Phlx provides co-location services and imposes fees through Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

housed.[3] Users of co-location services include private extranet providers, data vendors, as well as the Exchange members and non-members. The use of co-location services is entirely voluntary.

As detailed in the proposed co-location fee schedule, the Exchange imposes a uniform, non-discriminatory set of fees for various co-location services, including: Fees for cabinet space usage, or options for future space usage[4]; installation and related power provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers[5]; and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

Co-location customers are not provided any separate or superior means of direct access to the Exchange quoting and trading facilities. Nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among co-location customers themselves within in [sic] the datacenter. Likewise, the Exchange does not make available to co-located customers any market data or data feed product or service for data going into, or out of, the Exchange systems that is not likewise available to all the Exchange members.[6] Finally, all orders sent to the Exchange market enter the marketplace through [sic] same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, the Exchange has created no special market technology or programming that is available only to co-located customers and the Exchange has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

Co-location services are generally available to all qualified market participants who desire them. With the exception of customers participating in the Cabinet Proximity Option program, the Exchange allocates cabinets and power on a first-come/first-serve basis. Should available cabinet inventory shrink to 40 cabinets or less, the Exchange will limit new cabinet orders to a maximum of 4 cabinets each, and all new cabinets will be limited to a maximum power level of 5kW. Should available cabinet inventory shrink to zero, the Exchange will place firms seeking services on a waiting list based on that the Exchange receives signed orders for the services from the firm. In order to be placed on the waiting list, a firm must have utilized all existing cabinets they already have in the datacenter. Once on the list, the firms, on a rolling basis, will allocated a single 5kW cabinet each time one becomes available. After receiving a cabinet, the firm will move to the bottom of the waiting list.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing codifies and makes transparent the uniform fees imposed by the Exchange's technology subsidiary for co-location services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–18. This file number should be included on the

[3] Currently, the Exchange provides its current co-location services through data centers located in the New York City and Mid-Atlantic areas.

[4] NASDAQ OMX PHLX is implementing a Cabinet Proximity Option program where, for a monthly a fee, customers can obtain an option for future use on available currently-unused cabinet floor space in proximity to their existing equipment. Under the program, customers can reserve up to maximum of 20 cabinets which the Exchange will endeavor to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: Proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.

[5] These fees are for telecommunications connectivity only. Market Data fees are charged independently by NASDAQ OMX PHLX and other exchanges.

[6] Currently, the Exchange makes available to co-located customers a 10Gb fiber connection. The Exchange will likewise make available a 10Gb fiber connection to other customers in the first quarter of 2010. The Exchange has not received any requests for 10Gb fiber connections from firms that are not co-located.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–18 and should be submitted on or before March 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2787 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61480; File No. SR–Phlx–2010–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Transaction Fees and Rebates for Options

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule by adopting, on a pilot basis, per contract transaction fees for options overlying the PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C"). The fees would apply to: (i) Transaction sides that remove liquidity from the Exchange's disseminated market, and (ii) Firm and broker-dealer quotes and orders that are included in the Exchange's disseminated market.

Additionally, the Exchange proposes to offer a transaction rebate to certain liquidity providers, as described more fully below.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after February 1, 2010. The proposed changes to the fee schedule will be effective on a pilot basis, scheduled to expire March 2, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase liquidity and to attract order flow in QQQQ, IWM and C options on the Exchange.

Transaction Charges for Removing Liquidity

The Exchange proposes to assess a per-contract transaction charge in QQQQ, IWM and C options on six different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange. The per-contract transaction charge would depend on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The proposed amendments to the Exchange's Fee Schedule would break down market participants by the following six categories: (i) Specialists, Registered Options Traders ("ROTs") [3] that do not submit electronic quotations ("Non-Streaming ROTs"),[4] Streaming Quote Traders ("SQTs"),[5] and Remote Streaming Quote Traders ("RSQTs"),[6] (ii) customers that submit orders that are not Directed Orders [7] ("Non-Directed Customers"); (iii) customers that submit Directed Orders ("Directed Customers"); [8] (iv) specialists, SQTs and

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account.

[4] In addition to the fees for QQQQ, IWN and C options, Non-Streaming ROTs will be assessed the fees applicable to Standard and Poor's Depositary Receipts/SPDRs ("SPY"). *See* SR–Phlx–2009–116.

[5] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[6] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[7] "Directed Order" means any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM.

[8] For the purposes of this fee, a Directed Customer is an order from a customer directed to a Directed Participant for execution. A Directed Participant is

RSQTs that receive Directed Orders ("Directed Participants" or "Directed Specialists, RSQTs, or SQTs" [9]); (v) Firms; and (vi) broker-dealers.

The per-contract transaction charges to be assessed on participants who submit proprietary quotes and/or orders that remove liquidity in QQQQ, IWM and C options from the Exchange in QQQQ, IWM and C options are, by category:

Category	Charge (per contract)
Specialist, ROT, SQT, RSQT	$0.40
Non-Directed Customer	0.40
Directed Customer	0.25
Directed Participants	0.30
Firms	0.45
Broker-Dealers	0.45

Transaction Charges for Adding Liquidity

The Exchange proposes to assess a transaction charge of $0.35 per contract to Firms and $0.45 per contract to broker-dealers.

Rebates

In order to promote and encourage liquidity in QQQQ, IWM and C options, the Exchange proposes to amend its fee schedule to include a per-contract rebate relating to transaction charges for orders or quotations that add liquidity in QQQQ, IWM and C options. The amount of the rebate would depend on the category of participant whose order or quote was executed as part of the PHLX Best Bid and Offer. Specifically, the per-contract rebates are, by category:

Category	Rebate (per contract)
Specialist, ROT, SQT, RSQT	$0.20
Non-Directed Customer	0.05
Directed Customer	0.20
Directed Participants	0.25
Firms	N/A
Broker-Dealers	N/A

Applicability of Other Fees

- The $900,000 monthly cap that is currently applicable to ROTs and specialists transacting equity options will not be applicable to the fees described herein.[10]
- The $85,000 Firm Related Equity Option Cap will not be applicable to the fees described herein.[11]
- The Exchange pays a per-contract Market Access Provider ("MAP") Subsidy to any Exchange member organization that qualifies as an Eligible MAP.[12] The MAP Subsidy will not apply to electronic transactions in QQQQ, IWM and C.[13]
- Payment for Order Flow fees [14] will not be collected on transactions in QQQQ, IWM and C options.
- All electronic auctions will be free to Non-Directed Customers, Directed Customers, Directed Participants, Specialists, SQTs and RSQTs.[15] Electronic auctions include, without limitation, the Complex Order Live Auction ("COLA"),[16] and Quote and Market Exhaust auctions.[17] Firms and broker-dealers will be assessed the appropriate charge for removing liquidity.
- The fees described herein will not apply to contracts executed during the Exchange's opening process.[18] Firms and broker-dealers will be assessed the appropriate charge for removing liquidity.
- The Exchange pays an Options Floor Broker Subsidy to member organizations with Exchange registered Floor Brokers for eligible contracts that are entered into the Exchange's Options Floor Broker Management System. The Options Floor Broker Subsidy will be applicable to the transactions described herein.[19]
- The Exchange assesses a Cancellation Fee of $2.10 per order on member organizations for each cancelled electronically delivered customer order in excess of the number of customer orders executed on the Exchange by that member organization in a given month.[20] The Cancellation Fee will continue to apply.
- Transaction fees for Linkage "P" and "P/A" Orders would be applicable to the transaction listed herein.[21]
- Regular Equity Option transaction fees will apply to Complex Orders that are electronically executed against a contra-side order with the same Complex Order Strategy.
- Single contra-side orders that are executed against the individual components of Complex Orders will be charged under the proposed Fee Schedule. The individual components of such a Complex Order will not be charged.
- QQQQ, IWM and C transactions executed via open outcry will be subject to the standard equity options fee schedule. However, if one side of the transaction is executed using the Options Floor Broker Management System [22] and any other side of the trade was the result of an electronically submitted order or a quote, then the fees proposed herein will apply to the FBMS contracts and contracts that are executed electronically on all sides of the transaction.

a Specialist, SQT, or RSQT that executes an order directed to it for execution.

[9] *See* Exchange Rule 1080(l), " * * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[10] *See* proposed rule change SR–Phlx–2009–104.

[11] *See* Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR–Phlx–2009–104.)

[12] An "Eligible MAP" is defined in the Exchange's Fee Schedule in the Market Access Provider Subsidy.

[13] *See* Securities Exchange Act Release No. 59537 (March 9, 2009), 74 FR 11151 (March 16, 2009) (SR–Phlx–2009–19).

[14] *See* Securities Exchange Act Release No. 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[15] With respect to electronic auctions, it is systemically difficult to determine which participant(s) would qualify for a rebate, therefore the Exchange has determined not to apply the rebate to transactions resulting from electronic auctions.

[16] COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO. *See* Exchange Rule 1080.

[17] Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust auction for the initiating order. Under Market Exhaust, any order volume that is routed to away markets will be marked as an Intermarket Sweep Order or "ISO." *See* Exchange Rule 1082.

[18] *See* Exchange Rule 1017.

[19] *See* Securities Exchange Act Release No. 60578 (August 27, 2009), 74 FR 45666 (September 3, 2009) (SR–Phlx–2009–72).

[20] *See* Securities Exchange Act Release No. 60188 (June 29, 2009), 74 FR 32986 (July 9, 2009) (SR–Phlx–2009–48).

[21] *See* Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR–Phlx–2009–53). This pilot is scheduled to expire on July 31, 2010. The Exchange understands that certain exchanges continue to utilize Linkage to send P/A Orders.

[22] The Options Floor Broker Management System ("FBMS") is a component of the Exchange's system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trial provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. *See* Exchange Rule 1080, Commentary .06.

The Effect of Current Fees Applicable to SPY

The proposed fees for options overlying QQQQ, IWM and C currently apply to options overlying SPY.[23] The Exchange began charging the same fees for SPY beginning with trades settling on or after January 4, 2010 on a pilot basis, scheduled to expire March 2, 2009 (the "pilot"). As stated above, the proposed fees for QQQQ, IWM and C options will be made part of the pilot.

Prior to the implementation of the pilot respecting SPY options, the percentage of customer orders in SPY options executed on the Exchange that were Directed Customer orders was 83.6%. Since the implementation of the pilot in SPY options, 93.8% are now Directed Customer orders. This change suggests that charging different rates for Directed and Non-Directed Customer orders creates an incentive for member organizations to direct customer order flow to an Exchange specialist, SQT or RSQT. The economic benefit of directing order flow to Exchange specialists, SQTs and RSQTs, coupled with the incentive based pricing for providing liquidity, have resulted in narrower spreads and increased size in the Exchange's disseminated market in SPY options. Furthermore, the Exchange's disseminated size in SPY options represents a higher percentage of the National Best Bid/Offer ("NBBO") in SPY options since the implementation of the pilot. Because of this, the Exchange has routed fewer customer orders to away markets, thereby providing customers with faster and more efficient executions at the NBBO on the Exchange, and reducing the number of instances in which the liquidity disseminated by away markets might be executed before such routed orders arrive.

The Exchange expects that this pricing model will affect its markets for options overlying QQQQ, IWM and C in the same way it has affected its markets for SPY options. The economic incentives to direct orders to Exchange Directed Participants, and the concomitant narrowed spreads, increased liquidity, more frequent NBBO pricing, and overall market efficiencies experienced by the Exchange in SPY options should also be realized in QQQQ, IWM and C options. The proposal benefits customers, the investing public and the options markets on the Exchange in particular, and on the options markets as a whole.

The Exchange is also proposing to make a minor modification to the Fee Schedule to remove all plural references in the categories.

The proposed changes to the fee schedule will be effective for transactions settling on or after February 1, 2010, and will be effective for a pilot period scheduled to expire March 2, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[24] in general, and furthers the objectives of Section 6(b)(4) of the Act[25] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the amendments upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (i.e., its propensity to add or remove liquidity).

Specifically, the Exchange believes that its proposal to charge a different fee and to pay a different rebate for Non-Directed Customers relative to Directed Customers is an equitable allocation of reasonable fees and other charges among Exchange members, and is consistent with the current fee schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.[26]

The Exchange notes that orders routed to the Exchange as Principal Acting as Agent Orders ("P/A Orders")[27] via the Intermarket Option Linkage ("Linkage") under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Plan") accounted for most of the Non-Directed order flow the Exchange received in the symbols affected under the instant proposal. The participating U.S. options exchanges determined to withdraw from the Plan and, on June 17, 2008, the Exchange filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan ("New Plan"), joining all other approved options markets in adopting the New Plan. The concept of P/A orders routed through a central Linkage "hub" does not exist under the New Plan. P/A Orders were routed to remove liquidity from the Exchange under the Plan; orders routed from away markets to remove liquidity are now routed directly to the Exchange, in large part as Non-Directed Customer orders. The Exchange assessed transaction fees applicable to the execution of P/A Orders, but did not assess transaction fees on customer orders sent to the Exchange outside the Linkage. The Exchange also charged different per-contract transaction fees for P/A Orders and Principal Orders ("P Orders")[28] sent to remove liquidity from the Exchange. The Exchange charged $0.45 per option contract for P Orders sent to the Exchange and $.30 per contract for P/A Orders,[29] while charging nothing for customer orders submitted to the Exchange outside the Linkage. The Exchange believes that Non-Directed Customers now "stand in the shoes" of what were previously P/A Orders, and the proposed transaction charges applicable to Non-Directed Customers are similar to the charges that applied to P/A Orders. Thus, these proposed fees are not unfairly discriminatory relative to the proposed fees for Directed Customers, based upon the precedent of charging for P/A Orders but not for customer orders sent outside the Linkage.

Order flow providers that control customer order flow and route customer orders to exchanges are responsible to obtain the best pricing available for their customers. An order flow provider has the ability to enter into arrangements whereby they may receive consideration for directing the customer order to a specific market maker (specialists, SQTs and/or RSQTs). Under the proposal, a Directed Customer would be charged a lower per-contract transaction fee, and would receive a higher rebate, based on such an arrangement.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular exchange to be excessive or unfair. The Exchange believes that the fees it charges for options overlying QQQQ, IWM and C remain competitive with fees charged by other venues, provides incentives that improve execution quality and therefore continue to be reasonable and equitably allocated to those members that opt to

[23] *See* SR–Phlx–2009–116.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

[26] NYSE Amex currently charges different rates to different market participants in assessing its firm facilitation fee. *See* Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR–NYSEAmex–2009–38).

[27] A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent.

[28] A Principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order.

[29] *See* Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR–Phlx–2009–53).

send order flow to the Exchange rather alternative options exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [30] and paragraph (f)(2) of Rule 19b–4 [31] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–14 and should be submitted on or before March 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2786 Filed 2–8–10; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 240.19b–4(f)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 11, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 11, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: February 4, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2972 Filed 2–5–10; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending January 9, 2010.

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0001.

Date Filed: January 4, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 2010.

Description: Application of Craig Air Center, Inc. requesting authority to

operate scheduled passenger service as a commuter air carrier ("the Statute").

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations Alternate Federal Register Liaison.

[FR Doc. 2010–2843 Filed 2–8–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 9, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0243.

Date Filed: October 6, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 27, 2009.

Description: Application of Albinati Aeronautics SA ("Albinati") requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the Government of Switzerland and the Government of the United States of America in order to engage in: (i) Charter foreign air transportation of persons, property and mail from points behind Switzerland via Switzerland and intermediate points to a point or points in the United States and beyond; and (ii) Fifth Freedom charter service pursuant to the prior approval requirements set forth in Part 212 of the Department's Economic Regulations.

Docket Number: DOT–OST–2009–0244.

Date Filed: October 6, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 27, 2009.

Description: Application of Hellenic Imperial Airways ("Hellenic") requesting exemption authority and a foreign air carrier permit to conduct scheduled and charter foreign air transportation of persons, property, and mail, between a point or points in the European Community and the Member States of the European Union, and a point or points in the United States, to the full extent allowed under the Air Transport Agreement between the United States and the European Community and the Member States of the European Union.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 2010–2789 Filed 2–8–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1052X]

Almanor Railroad Company—Abandonment Exemption—in Plumas and Lassen Counties, CA

Almanor Railroad Company (AL) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 12.3-mile line of railroad between milepost 0.0 in Chester, and milepost 12.3 near Clear Creek, in Plumas and Lassen Counties, CA. The line traverses United States Postal Service Zip Code 96020.

AL has certified that: (1) No local traffic has been handled to or from any customer over the rail line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 11, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 19, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 1, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to AL's representative: Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW., 8th Floor, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

AL has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 12, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), AL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by AL's filing of a notice of consummation by February 9, 2011, and there are no legal or regulatory barriers to

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 4, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–2746 Filed 2–8–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Draft Environmental Assessment and Public Information Workshop for the Proposed ORD Airport Surveillance Radar, Model 9, West Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Draft Environmental Assessment and Public Information Workshop for the Proposed ORD Airport Surveillance Radar, Model 9, West Chicago, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) proposes to fund, construct, and operate an Airport Surveillance Radar, Model 9 (ASR–9) to serve the western airspace of O'Hare International Airport (ORD), Chicago, IL. The FAA's preferred alternative is to install the ASR–9 at a site near the corner of Kress and Western Roads on the southeast side of DuPage Airport, in western DuPage County. The purpose and need of the ASR–9 is to enhance air traffic management for ORD to achieve the benefits of providing expanded radar coverage that would allow terminal air traffic control for additional new approach routes, as evaluated and approved in the O'Hare Modernization Environmental Impact Statement/Record of Decision.

The FAA has prepared a Draft Environmental Assessment (EA) document in conformance with requirements of the National Environmental Policy Act (NEPA) and FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.* The Draft EA analyzes the potential environmental effects that may result from the construction and operation of the ASR–9. The impacts of the radar are evaluated at the proposed Kress and Western site and alternative sites, including the no action alternative (i.e., not installing the ASR–9). A copy of the Draft EA is available for public review at the following locations:

West Chicago Public Library, 118 West Washington St., West Chicago, IL;

St. Charles Public Library, 1 South Sixth Ave., St. Charles, IL;

Geneva Public Library, 127 James St., Geneva, IL;

DuPage Airport, 2700 International Drive, West Chicago, IL.

The FAA will host a Public Information Meeting on Thursday, March 11, 2010 from 4 p.m. to 8 p.m. at: Hilton Garden Inn St. Charles, 4070 East Main Street, Saint Charles, IL. The public is invited to attend the meeting.

ADDRESSES: The FAA will accept written comments on the Draft EA until close of business on March 26, 2010. Comments on the Draft EA will be accepted at the meeting or may be sent to: Ms. Virginia Marcks, FAA, AJW–C14D, 2300 East Devon Ave., Des Plaines, IL 60018, fax 847–294–7698, e-mail *virginia.marcks@faa.gov*. Copies of the Draft EA may be obtained by contacting Ms. Virginia Marcks. Comments received on the Draft EA during the public comment period will be addressed in a Final EA.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. *Telephone number:* 847–294–7494. *E-mail: virginia.marcks@faa.gov*.

Issued in Des Plaines, Illinois February 1, 2010.

Virginia Marcks,

Manager, Infrastructure Engineering Center, Chicago, AJW–C14D, Central Service Area.

[FR Doc. 2010–2710 Filed 2–8–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010–0011]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel POLLOCK XIII.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0011 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 11, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0011. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel POLLOCK XIII is:

Intended Commercial Use of Vessel: "OUPV sightseeing cruises in Suisun Slough and surrounding Delta area."

Geographic Region: "California."

Privacy Act

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).

Dated: January 25, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–1995 Filed 2–8–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of Financial Stability (OFS) is soliciting comments concerning the Use of Funds Survey for Capital Purchase Program participants.

DATES: Written comments should be received on or before April 12, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Daniel Abramowitz, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; (202) 927–9645.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed as above.

SUPPLEMENTARY INFORMATION:

Title: Troubled Asset Relief Program (TARP)—Capital Purchase Program (CPP) Use of Funds Survey.

OMB Control Number: 1505–0222.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program (TARP). The TARP includes several components including a voluntary Capital Purchase Program (CPP) under which the Department has purchased qualifying capital in U.S. banking organizations. The CPP is an important part of the Department's efforts to restore confidence in our financial system and ensure that credit continues to be available to consumers and businesses. As an essential part of restoring confidence, the Treasury has committed to determining the effectiveness of the CPP. Additionally, American taxpayers are particularly interested in knowing how banks have used the money that Treasury has invested through the CPP. Consequently, the Treasury is seeking responses from banking institutions that have received CPP funds regarding: how the CPP investment has affected the banks' operations, how these institutions have used CPP funds, and how their usage of CPP funds has changed over time. The information will be used to gauge how participants in the CPP are utilizing TARP capital.

Type of Review: Extension without change to a currently approved information collection.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Number of Respondents: 640.

Estimated Total Annual Burden Hours: 51,200 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 16, 2010.

Daniel Abramowitz,

Office of Financial Stability PRA Program Officer.

[FR Doc. 2010–2716 Filed 2–8–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Procedures for Monitoring Secrecy Act Compliance

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before April 12, 2010.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., and by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Louise Batdorf (202) 906–7087, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

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

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection:

Title of Proposal: Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 1550–0041.

Form Numbers: N/A.

Regulation requirement: 12 CFR Parts 563.177 and 563.180.

Description: In 1970, Congress passed the Currency and Foreign Transactions Report Act commonly known as the 'Bank Secrecy Act' ("BSA"). The Money Laundering Control Act of 1986 further augmented the BSA's effectiveness by adding interrelated sections 8(s) and 21 to the Federal Deposit Insurance Act, which applies to savings associations. Specifically, Section 1359 of the Anti-Drug Abuse Act of 1986, Public Law 99–570 ("Act"), required the former Federal Home Loan Bank Board ("FHLBB") to prescribe regulations requiring regulated institutions to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA and the U.S. Department of Treasury regulation 31 CFR part 103. The Office of Thrift Supervision ("OTS") is charged with the responsibility to examine savings association procedures periodically to ensure their effectiveness; OTS is therefore subject to the Act. *See* 12 CFR 563.177 and 563.180. The requirement that savings associations establish written BSA compliance procedures is a one-time event, but revisions to those procedures must occur as deemed necessary.

OTS examiners review the written procedures during examinations in order to ensure the implementation of adequate systems for complying with the BSA and its implementing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 765.

Estimated Burden Hours per Response: 40 hours.

Estimated Frequency of Response: Annually.

Estimated Total Burden: 30,600 hours.

Dated: February 3, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Thrift Supervision.

[FR Doc. 2010–2719 Filed 2–8–10; 8:45 am]

BILLING CODE 6720–01–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 10–01]

Sunshine Act Meeting Notice

The TVA Board of Directors will hold a public meeting on February 11, 2010, at the Holiday Inn Hotel and Suites, Bristol Convention Center, Ballrooms B/C, 3005 Linden Drive, Bristol, Virginia 24202, to consider the matters listed below. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. Immediately following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. **Please Note:** Speakers must pre-register online at TVA.gov or sign in before the meeting begins at 8:30 a.m. on the day of the meeting. The Board will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

Old Business

Approval of minutes of November 19, 2009, Board Meeting.

New Business

1. Chairman's Report.
2. President's Report.
3. Report of the Finance, Strategy, Rates, and Administration Committee:

A. Winning Performance/Long-Term Incentive Compensation for Fiscal Year 2010.

B. Executive Compensation.

C. Extension of interim joint-ownership arrangements with Seven States Corporation for Southaven Power Plant.

4. Report of the Operations, Environment, and Safety Committee:

A. TVA Transmission Standards of Conduct.

5. Report of the Audit, Governance, and Ethics Committee.
6. Report of the Community Relations and Energy Efficiency Committee.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

February 4, 2010.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 2010–2902 Filed 2–5–10; 11:15 am]

BILLING CODE 8120–08–P

Federal Register

Tuesday,
February 9, 2010

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition to List the American Pika as Threatened or Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2009-0021

MO 92210-0-0010]

Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition to List the American Pika as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the American pika (*Ochotona princeps*) as threatened or endangered under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the American pika, at the species level or any of the five recognized subspecies (*O. p. princeps*, *O. p. saxatilis, O. p. fenisex*, *O. p. schisticeps*, and *O. p. uinta*), is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the American pika, the five subspecies, or its habitat at any time.

DATES: The finding announced in this document was made on February 9, 2010.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS-R6-ES-2009-0021. 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, Utah Ecological Services Field Office, 2369 W. Orton Circle, Suite 50, West Valley City, UT 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES**); by telephone at 801-975-3330; or by facsimile at 801-975-3331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

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 or 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 12–month finding, we may determine that the petitioned action is either: (1) not warranted, (2) warranted, or (3) 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. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Actions

On October 2, 2007, we received a petition dated October 1, 2007, from the Center for Biological Diversity (Center) requesting that the American pika (*Ochotona princeps*) be listed as threatened or endangered under the Act. Included in the petition was a request that we conduct a status review of each of the 36 recognized subspecies of American pikas to determine if separately listing any subspecies as threatened or endangered may be warranted. Specifically, the Center requested that seven American pika subspecies be listed as endangered: the Ruby Mountains pika (*O. p. nevadensis*), *O. p. tutelata* (no common name), the White Mountains pika (*O. p. sheltoni*), the gray-headed pika (*O. p. schisticeps*), the Taylor pika (*O. p. taylori*), the lava-bed pika (*O. p. goldmani*), and the Bighorn Mountain pika (*O. p. obscura*). The Center requested that the remaining subspecies be listed as threatened. We acknowledged receipt of the petition in a letter to the Center dated October 18, 2007. In that letter, we also stated that we could not address its petition at that time, because existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded that emergency listing of the American pika was not warranted at that time.

We received a 60–day notice of intent to sue from the Center dated January 3, 2008. We received a complaint from the Center on August 19, 2008. We submitted a settlement agreement to the Court on February 12, 2009, agreeing to submit a 90–day finding to the **Federal Register** by May 1, 2009, and, if appropriate, to submit a 12–month finding to the **Federal Register** by February 1, 2010.

We received a letter from the Center, dated November 3, 2008, that discussed and transmitted supplemental information found in recent scientific studies that had not been included in the original petition. We considered this additional information when making this finding.

In our 90–day finding published on May 7, 2009 (74 FR 21301), we reviewed the petition, petition supplement, supporting information provided by the petitioner, and information in our files, and evaluated that information to determine whether the sources cited support the claims made in the petition. We found that the petitioner presented substantial information indicating that listing the American pika as threatened or endangered under the Act may be warranted, because of the present or threatened destruction, modification, or curtailment of its habitat or range as a result of effects related to global climate change. We also solicited additional data and information from the public, other governmental agencies, the scientific community, industry, and other interested parties concerning the status of the American pika throughout its range. The information collection period for submission of additional information ended on July 6, 2009. This notice constitutes our 12–month finding on the October 1, 2007, petition to list the American pika as threatened or endangered.

Species Information

Biology

Like other pika species, the American pika (hereafter pika, unless stated otherwise) has an egg-shaped body with short legs, moderately large ears, and no visible tail (Smith and Weston 1990, p. 2). Fur color varies among subspecies and across seasons, typically with shorter, brownish fur in summer and longer, grayish fur in winter (Smith and Weston 1990, p. 3). The species is intermediately sized, with adult body lengths ranging from 162 to 216 millimeters (6.3 to 8.5 inches) and mean body mass ranging from 121 to 176

grams (4.3 to 6.2 ounces) (Hall 1981, p. 287; Smith and Weston 1990, p. 2).

American pikas are generalist herbivores that select different classes of vegetation (Huntley *et al.* 1986, p. 143) and use different parts of the same plants when grazing versus haying (Dearing 1997a, p. 1160). Feeding (the immediate consumption of vegetation) occurs year-round; haying (the storage of vegetation for later consumption) and the creation of haypiles occurs only in summer months after the breeding season (Smith and Weston 1990, p. 4). The primary purpose of haypiles is overwintering sustenance, and individuals harvest more vegetation than necessary for these haypiles (Dearing 1997a, p. 1156). Pikas feed an average distance of 2 meters (m) (6.5 feet (ft)) from talus and will travel an average distance of 7 m (23 ft) when haying (Huntly *et al.* 1986, pp. 141-142). Huntly *et al.* (1986, p. 142) found that no feeding occurred beyond 10 m (33 ft) from talus, but haying was observed up to 30 m (98 ft).

Vegetative communities immediately adjacent to pika locations are typically dominated by grasses (Huntly 1987, p. 275). When pikas are excluded from grazing near talus slopes, the biomass of forbs and sedges (Roach *et al.* 2001, p. 319) and cushion plants (Huntly 1987, p. 275) increases rapidly. Therefore, foraging pikas influence the presence of specific plant classes or functional groups, vegetative cover, and species richness (Huntly 1987, p. 274; Roach *et al.* 2001, p. 315), and modify habitat in their quest for food and survival (Aho *et al.* 1998, p. 405). Forbs and woody plants are typically found in pika haypiles (Huntly *et al.* 1986, p. 143), which provide the major source of sustenance for the winter (Dearing 1997a, p. 1156). High phenolic (chemical compounds characterized by high acidity) concentrations of forbs and shrubs prevent pikas from grazing immediately on these plant types; however, pikas cache these plants and delay consumption until the toxins decay to tolerable levels (Dearing 1997b, p. 774). Additionally, plants with high levels of the phenolics deter bacterial growth and exhibit superior preservation qualities (Dearing 1997b, p. 774).

Thermoregulation is an important aspect of American pika physiology, because individuals have a high normal body temperature of approximately 40 °C (104 °F) (MacArthur and Wang 1973, p. 11; Smith and Weston 1990, p. 3), and a relatively low lethal maximum body temperature threshold of approximately 43 °C (109.4 °F) (Smith and Weston 1990, p. 3). Most thermoregulation of individuals is behavioral, not physiological (Smith 1974b, p. 1372; Smith and Weston 1990, p. 3). In warmer environments, such as during midday sun and at lower elevation limits, pikas typically become inactive and withdraw into cooler talus openings (Smith 1974b, p. 1372; Smith and Weston 1990, p. 3). Below-surface temperatures within talus openings can be as much as 24 °C (43.2 °F) cooler than surface temperatures during the hottest time of day (Finn 2009a, pers. comm.). Pikas avoid hyperthermia (heat stroke) during summer months by engaging in short bursts of surface activity followed by retreat to a cooler microclimate beneath the surface (MacArthur and Wang 1974, p. 357). Pikas can be nocturnal where daytime temperatures are stressful and restrict diurnal activity (Smith 1974b, p. 1371).

Habitat occupied by American pikas is often patchily distributed, leading to a local population structure that is composed of island-like sites commonly termed a metapopulation (Smith and Weston 1990, p. 4; Moilanen *et al.* 1998, pp. 531-532). A metapopulation is composed of many largely discrete local populations, and metapopulation dynamics are characterized by extinction and recolonization occurring within independent local populations (Hanski 1999, cited in Meredith 2002, p. 47). Local populations that make up each metapopulation frequently become extirpated and can be subsequently reestablished by immigration (Smith 1974a, p. 1112; Moilanen *et al.* 1998, p. 532). American pikas within metapopulations often exhibit a low emigration rate, especially in adults. Juveniles usually have short migration distances; however, exceptions occur (Peacock 1997, pp. 346-348).

Dynamics of American pika populations are sufficiently asynchronous (not occurring at the same time), so that simultaneous extinction of entire metapopulations is unlikely (Smith 1980, p. 11; Moilanen *et al.* 1998, p. 532). When a single population becomes extirpated, distance to a source of colonizing pikas is an influential factor determining the probability of recolonization (Smith 1980, p. 11). American pika populations on small and medium-sized islands are more likely to be extirpated, with the probability of extirpation being higher on more distant islands (Smith 1980, p. 12).

Historically, researchers hypothesized that American pika juveniles are philopatric (remain in or return to their birthplace), dispersing only if no territory is available within their birth place (various studies cited in Smith and Weston 1990, p. 6). However, Peacock (1997, pp. 346-348) demonstrated that juvenile emigration to other population sites occurred over both long (2 kilometers (km); 1.24 miles (mi)) and short distances, and acted to support population stability by replacing deceased adults. Territory availability is a key factor for dispersal patterns, and local pika populations lack clusters of highly related individuals (Peacock 1997, pp. 347-348).

Dispersal by American pikas is governed by physical limitations. Smith (1974a, p. 1116) suggested that it was difficult for juveniles to disperse over distances greater than 300 m (984 ft) in low-elevation (2,500 m (8,200 ft)) populations. Lower elevations are warmer in summer and represent the lower edge of the elevational range of the species (Smith 1974a, p. 1112). While dispersal distances of 3 km (1.9 mi) have been documented at other locations and elevational ranges (Hafner and Sullivan 1995, p. 312), it is believed that the maximum individual dispersal distance is probably between 10 and 20 km (6.2 and 12.4 mi) (Hafner and Sullivan 1995, p. 312). This conclusion is based on genetic (Hafner and Sullivan 1995, pp. 302-321) and biogeographical (Hafner 1994, pp. 375-382) analysis. Genetic analysis revealed that pika metapopulations are separated by between 10 and 100 km (6.2 to 62 mi) (Hafner and Sullivan 1995, p. 312). Biogeographical analysis demonstrated that, during the warmer period of the mid-Holocene (about 6,500 years ago), the species retreated to cooler sites, and the species subsequently expanded its range somewhat as climatic conditions cooled (Hafner 1994, p. 381). However, the species has not recolonized vacant habitat patches greater than 20 km (12.4 mi) from refugia sites and has recolonized less than 7.8 percent of available patches within 20 km (12.4 mi) of those same refugia sites (Hafner 1994, p. 381). The lack of recolonization is due to habitat becoming unsuitable from vegetation filling in talus areas (removing pika habitat) or from habitat becoming too dry due to environmental changes resulting from historical changes in climate (Hafner 1994, p. 381).

Individual pikas are territorial, maintaining a defended territory of 410 to 709 square meters (m^2) (4,413 to 7,631 square feet (ft^2)), but fully using overlapping home ranges of 861 to 2,182 m^2 (9,268 to 23,486 ft^2) (various studies cited in Smith and Weston 1990, p. 5). Individuals mark their territories with scent and defend the territories through

aggressive fights and chases (Smith and Weston 1990, p. 5).

Adults with adjacent territories form monogamous mating pairs. Males are sexually monogamous, but make little investment in rearing offspring (Smith and Weston 1990, pp. 5-6). Females give birth to average litter sizes of 2.4 to 3.7 twice a year (Smith and Weston 1990, p. 4). However, fewer than 10 percent of weaned juveniles originate from the second litter, because mothers only wean the second litter if the first litter is lost (various studies cited in Smith and Weston 1990, p. 4).

Adult pikas can be territorially aggressive to juveniles, and parents can become aggressive to their own offspring within 3 to 4 weeks after birth (Smith and Weston 1990, p. 4). To survive the winter, juveniles need to establish their own territories and create haypiles before the winter snowpack (Smith and Weston 1990, p. 6; Peacock 1997, p. 348). However, establishing a territory and building a haypile does not ensure survival.

Yearly average mortality in pika populations is between 37 and 53 percent. Few pikas live to be 4 years of age (Peacock 1997, p. 346), however, some individuals survive up to 7 years (Smith 2009, p. 2).

Taxonomy

Historically, many taxonomic forms have been identified within Nearctic pikas, including as many as 13 species and 37 subspecies (Hafner and Smith 2009, p. 1). Initially, 13 species and 25 subspecies of Nearctic (a biogeographic region that includes the Arctic and temperate areas of North America and Greenland) pikas were described (Richardson 1828, cited in Hafner and Smith 2009). Howell (1924, pp. 10-11) performed a full taxonomic revision of the American pika and recognized 3 species: *Ochotona collaris, Ochotona princeps* (16 subspecies), and *Ochotona schisticeps* (9 subspecies). Later, Hall (1981, pp. 286-292) described 36 subspecies of American pika spread throughout western Canada and the western United States. The petition (Wolf *et al.* 2007) from the Center of Biological Diversity that requested that all American pika subspecies be listed as threatened or endangered was based on the Hall (1981, pp. 286-292) taxonomy.

These references, in addition to others (Hafner and Smith 2009, p. 5) were used as the set of authoritative resources on pika taxonomy until genetic work identified four major genetic units of the American pika in the northern Rocky Mountains, Sierra Nevada, southern Rocky Mountains, and Cascade Range (Hafner and Sullivan 1995, p. 308). Further molecular phylogenetic and morphometric studies indicate the existence of five cohesive genetic units that have been referred to as "distinct evolutionarily significant units" (Galbreath *et al.* 2009a, p. 17; Galbreath *et al.* 2009b, pp. 7, 52). These studies support a revision of the subspecific taxonomy of the American pika to include five recognized subspecies: *Ochotona princeps princeps* (Northern Rockies), *O. p. saxatilis* (Southern Rockies), *O. p. fenisex* (Coast Mountains and Cascade Range), *O. p. schisticeps* (Sierra Nevada and Great Basin), and *O. p. uinta* (Uinta Mountains and Wasatch Range of Central Utah) (Hafner and Smith 2009, pp. 16-25). The previously described 36 subspecies (Hall 1981, pp. 286-292) are now referred to as subspecies synonyms, with each subspecies synonym corresponding to a subspecies described by Hafner and Smith (2009, pp. 16-25). We are making our finding based on the most recent information that has identified five subspecies of American pika. The petition (Wolf *et al.* 2007) from the Center of Biological Diversity no longer contains the best available information on taxonomy.

Historic Distribution and Habitat

The restriction of American pikas to their current distribution (discussed below) is relatively recent. The shift in habitat range was shaped by long-term climate change and attendant impacts on vegetation.

The geographic distribution of American pika may have encompassed not only the western United States and Canada during the last glacial maximum (30,000 years ago or later), but also parts of the eastern United States (Grayson 2005, p. 2104). Archaeological and paleontological records for pika demonstrate that approximately 12,000 years ago, pikas were living at relatively low elevations (less than 2,000 m (6,560 ft)) in areas devoid of talus (Mead 1987, p. 169; Grayson 2005, p. 2104). By the Wisconsinan glacial period (approximately 40,000 to 10,000 years ago), American pikas were restricted to the intermontane region of the western United States and Canada.

Low-elevation populations of American pikas became extinct in the northern half of the Great Basin between 7,000 and 5,000 years ago (Grayson 1987, p. 370). Fossil records indicate that the species inhabited sites farther south and at lower elevations than the current distribution during the late Wisconsinan and early Holocene periods (approximately 40,000 to 7,500 years ago), but warming and drying climatic trends in the middle Holocene period (approximately 7,500 to 4,500 years ago) forced populations into the current distribution of montane refugia (Grayson 2005, p. 2103; Smith and Weston 1990, p. 2). During the late Wisconsinan and early Holocene, now-extirpated American pika populations in the Great Basin occurred at an average elevation of 1,750 m (5,740 ft), which is 783 m (2,569 ft) lower than 18 extant (in existence) Great Basin pika populations (Grayson 2005, p. 2106).

Current Distribution and Habitat

Ochotona princeps princeps is patchily distributed in cool, rocky habitat, primarily in high-elevation alpine habitats (see below for exceptions), from the Northern Rocky Mountains of central British Columbia and Alberta through Idaho and Montana, several mountain ranges of Wyoming, the Ruby Mountains of Nevada, the Wasatch Range of Idaho and Utah, and the Park Range and Front Range of Colorado north of the Colorado River (Hafner and Smith 2009, p.19). *O. p. saxatilis* occupies habitat in the southern Rocky Mountains south of the Colorado River (Front Range, San Juan Mountains, Sangre de Cristo Range), and isolated highlands including the La Sal Mountains of southeastern Utah, Grand Mesa of Colorado, and Jemez Mountains of New Mexico (Hafner and Smith 2009, pp. 21-22). *O. p. schisticeps* occupies habitats in volcanic peaks of northern California, throughout the Sierra Nevada of California and Nevada, and isolated highlands throughout the Great Basin of Nevada, eastern Oregon (north to the Blue Mountains), and southwestern Utah (Hafner and Smith 2009, pp. 23-24). *O. p. fenisex* occupies habitats from the Coast Mountains and Cascade Range from central British Columbia south to southern Oregon (Hafner and Smith 2009, p. 20). *O. p. uinta* is patchily distributed in habitats in the Uinta Mountains and Wasatch Range of central Utah (Hafner and Smith 2009, p. 24).

Temperature restrictions influence the species' distribution because hyperthermia or death can occur after brief exposures (as little as 6 hours) to ambient temperatures greater than 25.5 °C (77.9 °F), if individuals cannot seek refuge from heat stress (Smith 1974b, p. 1372). Therefore, American pika habitat progressively increases in elevation in the southern extent of the distribution (Smith and Weston 1990, p. 2). In the northern part of its distribution (southwestern Canada), populations occur from sea level to 3,000 m (9,842 ft), but in the southern extent (New Mexico, Nevada, and

southern California) populations rarely exist below 2,500 m (8,202 ft) (Smith and Weston 1990, p. 2). Some exceptions exist in the southern portion of the species' range. For example, pikas in 10 percent of 420 study sites in the Sierra Nevada Mountains, Great Basin, and Oregon Cascade Mountains occur below 2,500 m and as low as 1,645 m (5,396 ft) at McKenzie Pass in the Cascade Mountains of Oregon (Millar and Westfall 2009, p. 16). Beever *et al.* (2008, p. 10) recently discovered a new population of American pika in the Hays Canyon Range of northwestern Nevada at elevations ranging from 1,914 to 2,136 m (6,280 to 7,008 ft).

American pikas primarily inhabit talus fields fringed by suitable vegetation in alpine or subalpine areas (Smith and Weston 1990, pp. 2-4). A generalist herbivore that does not hibernate, the species relies on haypiles of summer vegetation stored within talus openings to persist throughout the winter months (Smith and Weston 1990, p. 3). Alpine meadows that provide forage are important to pika survival in montane environments. The species also occupies other habitats that include volcanic land features (Beever 2002, p. 26; Millar and Westfall 2009, p. 10) and anthropogenic settings such as mine tailings, piles of lumber, stone walls, rockwork dams, and historic foundations (Smith 1974a, p. 1112; Smith 1974b, p. 1369; Lutton 1975, p. 231; Crisafulli 2009, pers. comm.; Millar and Westfall 2009, p. 10).

Pikas use talus, which can include rock-ice features, and other habitat types for den sites, food storage, and nesting (Smith and Weston 1990, p. 4; Beever *et al.* 2003, p. 39). Rock-ice features are defined as glacial- or periglacial- (i.e., around or near glaciers) derived landforms in high-elevation, semi-arid temperature mountain ranges and arctic landscapes (Millar and Westfall 2008, pp. 90-91). Talus, rock-ice feature till, and volcanic features (described below) also provide microclimate conditions suitable for pika survival by creating cooler, moist refugia in summer months (Beever 2002, p. 27; Millar and Westfall 2009, p. 19-21) and insulating individuals in the colder winter months (Smith 1978, p. 137; Millar and Westfall 2009, p. 21).

Among 420 sites surveyed by Millar and Westfall (2009, p. 10), 83 percent of the pika sites occurred in rock-ice feature till, most notably rock-glacier and boulder-stream landforms, which contain topographic-climatic conditions that are favored by pikas (Millar and Westfall 2009, p. 20).

Pikas also inhabit more atypical habitats that include lava tubes, caves, valley trenches, fault scarps, fault cracks, and cliff faces, which provide suitable habitat and thermal refuge (Beever 2002, pp. 26, 28; Millar and Westfall 2009, p. 10). For example, in Lava Beds National Monument in northern California and Craters of the Moon National Monument in southern Idaho, pikas typically inhabit large, contiguous areas of volcanic habitat (Beever 2002, p. 28). Within this habitat type, forage vegetation is accessible within distances comparable to dimensions of home ranges (Beever 2002, p. 28). Pikas select habitat that includes topographical features characterized by rocks large enough to provide necessary interstitial spaces for underground movement and tunneling. Like talus and rock-ice features, these habitats provide pikas with cool refugia during conditions that may result in heat stress, which in addition to behavioral thermoregulation mechanisms, allow pika to persist in these low-elevation and potentially thermally challenging environments (Beever 2002, pp. 27-28).

Population Status

We relied on information from the International Union for Conservation and Nature of Natural Resources (IUCN), NatureServe, published literature, and public submissions during the information collection period on our 90–day finding to evaluate the status of American pika populations.

The IUCN Red List of Threatened Species provides taxonomic, conservation status, and distribution information on plants and animals (IUCN 2009, p. 2). The IUCN Red List system is designed to determine the relative risk of extinction for species, and to catalogue and highlight plant and animal species that are facing a higher risk of global extinction. The IUCN identified the status of the American pika species as Least Concern in 2008 under the Red List review process (Beever and Smith 2008, p. 3). According to IUCN (version 3.1): "a taxon is Least Concern when it has been evaluated against the criteria and does not qualify for Critically Endangered, Endangered, Vulnerable or Near Threatened. Widespread and abundant taxa are included in this category." The IUCN uses five quantitative criteria to determine whether a taxon is threatened or not, and if threatened, which category of threat it belongs in (i.e., critically endangered, endangered, or vulnerable). "To list a particular taxon in any of the categories of threat, only one of the criteria needs to be met. The five criteria are: (1) Declining population (past, present and/or projected); (2) Geographic range size, and fragmentation, decline or fluctuations; (3) Small population size and fragmentation, decline, or fluctuations; (4) Very small population or very restricted distribution; and (5) Quantitative analysis of extinction risk (e.g., Population Viability Analysis) (IUCN Standards and Petitions Working Group 2008, p. 11)."

However, the IUCN (using the Hall (1981) taxonomic classification, as Vulnerable or Near Threatened) considers eight American pika subspecies synonyms. These subspecies synonyms are *Ochotona princeps goldmani, O. p. lasalensis*, *O. p nevadensis, O. p. nigrescens*, *O. p. obscura, O. p. sheltoni*, *O. p. tutelata*, and *O. p. schisticeps* (Beever and Smith 2008, p. 3). A vulnerable species or subspecies is facing a high risk of extinction in the wild. A near threatened species or subspecies is close to qualifying as or is likely to qualify as vulnerable in the near future (IUCN, section 3.1). Status for the eight subspecies synonyms applies under the Hall (1981) taxonomic classification of the American pika but may not apply to any of the subspecies described by Hafner and Smith (2009, pp. 16-25). For example, a status of "vulnerable" for *O. p. goldmani* does not imply that *O. p. princeps* (described by Hafner and Smith 2009, pp. 17-20) is vulnerable as well because the range of *O. p. goldmani* does not constitute the entire range of *O. p. princeps*.

NatureServe is a nonprofit organization that, in part, collects and manages species information and data in an effort to increase our understanding of species, ecosystems, and conservation issues (NatureServe 2009a, p. 1). NatureServe also assesses available scientific information to determine species status based on factors, including population number and size, trends, and threats. NatureServe provides comprehensive reports for species, including American pika. The report (Nature Service 2009b, pp. 1-7) for the American pika includes taxonomic information, conservation status information, lists of natural heritage records, species distribution by watershed, ecology and life history information, population delineation, population viability, and references. The report does not contain information on threats or a justification for designation of conservation status within states and provinces.

In a review conducted in 1996, NatureServe assigned the American pika a global status of secure (i.e., common; widespread and abundant) in the United States and the Canadian provinces of

Alberta and British and Columbia (NatureServe 2009b, pp. 1-2; Quinlan 2009, pers. comm.). Within the United States, NatureServe considers the species secure or apparently secure (i.e., uncommon but not rare; some cause for long-term concern due to declines or other factors) in Colorado, Idaho, Montana, Oregon, Washington, and Wyoming. NatureServe assigned the American pika a status of vulnerable in California and Utah (i.e., vulnerable in the jurisdiction due to a restricted range, relatively few populations, recent and widespread declines, or other factors making it vulnerable to extirpation), and a status of imperiled in Nevada and New Mexico (i.e., imperiled in the jurisdiction, because of rarity due to very restricted range, very few populations, steep declines, or other factors making it very vulnerable to extirpation from the jurisdiction).

Northern Rocky Mountain Subspecies (*Ochotona princeps princeps*)

The Northern Rocky Mountains subspecies (*Ochotona princeps princeps*) occurs primarily in Canada, Montana, Idaho, and Wyoming, with a smaller amount of occupied habitat in Washington, Nevada, Utah, and Colorado. Data on status and trends of *O. p. princeps* are lacking for portions of the subspecies range. Available data consists mostly of a list of sites verified to be occupied in recent surveys. In locations where pika surveys have been conducted, we do not have historical information of the subspecies' at those sites for comparison.

The Canadian Endangered Species Conservation Council (2005) assigned a ranking of secure to *Ochotona princeps princeps* in Alberta and British Columbia, which are the only two provinces where this subspecies occurs in Canada. The ranking is based upon occurrence of large numbers of pikas in secure habitat (British Columbia Conservation Data Centre 2009, p. 1; Court 2009, pers. comm.). Pikas are common in suitable habitat in the mountains on both provincial lands and in national parks (Court 2009, pers. comm.). The population is thought to be stable in Alberta, Canada (Court 2009, pers. comm.). Greater than 100 occurrences of *O. p. princeps* occur within Alberta (Court 2009, pers. comm.). We do not have population trend information for British Columbia. We do not have any information to suggest the distribution of the pika is changing in Canada.

In Montana, there is little historical information to assess whether habitat loss has occurred or if populations are stable. Limited available data does not indicate a decline. Approximately 90 percent of available habitat in Glacier National Park is occupied (National Park Service (NPS) 2009, p. 9). Based upon occupancy rates elsewhere (Utah Division of Wildlife Resources (UDWR) 2009, pp. 6, 11), we conclude the occupancy rate of pikas within Glacier National Park is high.

Limited data are available for pika distribution, abundance, and population status in Wyoming. American pikas occur in every Wyoming mountain range except Laramie, Wasatch, and Black Hills (Wyoming Game and Fish Department (WGFD) 2009, p. 1). American pikas are believed to occur in all locations where they were observed historically within the Grand Teton National Park (NPS 2009, p. 10). The WGFD will add the American pika to their 2010 State Wildlife Action Plan (WAP) (WGFD 2009, p. 1). They propose to treat the subspecies as having an Unknown Native Species Status because population and distribution trends are unknown and limiting factors are poorly understood (WGFD 2009, p. 1).

In Idaho, the subspecies is broadly distributed and occupies a substantial number of sites throughout much of the State (Idaho Department of Fish and Game (IDFG) 2009, p. 1). The IDFG has no information to suggest threats exist to the subspecies. Pikas are not identified as a Species of Greatest Conservation Need in the Idaho Comprehensive Wildlife Conservation Strategy (CWCS) and pikas are considered to be secure, common, and widespread based on NatureServe's conservation status (IDFG 2005, App. A, p. 18). *O. p. princeps* was studied at Craters of the Moon National Monument in Idaho (Beever 2002, p. 25; NPS 2009, pp. 2-3), but reports did not reveal any information related to the status of pika populations there.

Ochotona princeps princeps in Utah currently have a high occupancy rate (96 percent) in suitable habitat (UDWR 2009, p. 7). Although there is no historical population information, UDWR believes that the high occupancy rate reflects stable populations (UDWR 2009, p. 11).

In Colorado, *Ochotona princeps princeps* is found only in the northern part of the State. Colorado Division of Wildlife (CDOW) (2009, p. 19) documented greater than 40 occupied sites based on historic and recent site surveys. Reports on *O. p. princeps* in Colorado do not provide any information on status (NPS 2009, p. 10-12; Ray 2009, pp. 1-4).

Nevada and Washington have little information on the subspecies status. American pika records collected from 1969 to 2008 from the Ruby Mountain chain in northeast Nevada identify at least 33 pika locations (Nevada Department of Wildlife (NDOW) 2009, pp. 2-3); however, we have no information on the status of populations from those locations. We have no information on the status of *O. p. princeps* in Washington.

As previously stated, Beever and Smith (2008, p. 3) considered populations of *O. p. goldmani, O. p. nevadensis*, and *O. p obscura*, which represent a portion of the range of *O. p. princeps* (Hafner and Smith 2009, pp. 18-19), as vulnerable (i.e., facing a high risk of extinction in the wild). Additionally, NatureServe (2009, p. 2) assigned Utah pikas, which contains populations representing all subspecies except *O. p. fenisex*, a status of vulnerable (i.e., a restricted range, relatively few populations, recent and widespread declines, or other factors making it vulnerable to extirpation).

In summary, most States and provinces that contain populations of *O. p. princeps* have not determined the subspecies' status and do not have information on population trends. Some populations within central Idaho (*O. p. goldmani*), northwestern Nevada (*O. p. nevadensis*), north-central Wyoming (*O. p. obscura*), and north-central Utah may be vulnerable (Beever and Smith 2008, p. 3; NatureServe 2009, p. 2). Outside of these areas, we do not have adequate information to determine the status of *O. p. princeps* populations.

Sierra Nevada Subspecies (*Ochotona princeps schisticeps*)

The Sierra Nevada subspecies (*Ochotona princeps schisticeps*) occurs primarily in California, Nevada, and Oregon with a small portion of occupied habitat in Utah. This subspecies has received more scientific study than any other American pika subspecies (Grayson 2005, p. 2104). Pikas are designated as a vulnerable species as well as a species of conservation priority in Nevada's WAP, with a declining population (WAP Team 2006, pp. 291, 405). *O. p. schisticeps* status appears to be declining within the interior Great Basin, primarily in southern Oregon and northwestern Nevada, and some places along the eastern Sierra Nevada Mountain Range (Beever *et al.* 2003, p. 44; Wilkening 2007, p. 58); however, outside of these areas there is no indication that the subspecies is in decline (Millar and Westfall 2009, p. 25). As identified by Beever *et al.* (2003, pp. 39, 44), the interior Great Basin refers to the hydrographic definition of the Great Basin (Grayson 1993, cited in Beever *et al.* 2003, p. 39).

As previously mentioned, some isolated populations of *O. p. schisticeps* have been extirpated in the interior Great Basin. Beever *et al.* (2003, p. 43) did not detect pikas at 6 of 25 historical (dating back to the early to mid-1900s) populations during surveys from 1994 to 1999 and later documented three extirpations during 2000 to 2007 (Wilkening 2007, pp. 25-27; Beever *et al.* 2009, p. 15).

Researchers have not systematically searched all potential pika habitat within the Great Basin and acknowledge that other sites with pikas may exist (Beever *et al.* 2009, pp. 31), particularly the Toiyabe Mountain Range, White Mountains, Toquima Mountain Range, and the Warner Mountains (Meredith 2002, p. 11; Beever 2009a, pers. comm.). In fact, two new sites were discovered in the Great Basin in northwestern Nevada from 2008 to 2009: Hays Canyon (Beever *et al.* 2008, p. 9) and Sheldon-Hart National Wildlife Refuge (Collins 2009, pers. comm.). However, the subspecies is rare in the Great Basin, and likely has been relatively rare in the Great Basin for the past several thousand years. It is unlikely that many additional occupied sites will be found (Beever *et al.* 2008, p. 11).

Trends of pika status are mixed in other locations within the subspecies range. Pikas occur within Sequoia and Kings Canyon National Parks in California along the eastern edge of the Sierra Nevada Mountain Range, however, the population status is unknown (NPS 2009, p. 6). Pikas are widely distributed throughout Lava Beds National Monument (Ray and Beever 2007, p. 2) and populations appear to persist in warmer and drier sites, which is contrary to expectations because pikas are generally restricted to cool, moist habitats on higher peaks (Hafner 1993, p. 375). The lower elevation range limit of pikas in Yosemite National Park has contracted and moved upslope by 153 m (502 ft) (Moritz *et al.* 2008, p. 263), and at least one historic pika site has been extirpated within the Park (Moritz 2007, p. 37). Despite this extirpation, we do not know the status of the entire Yosemite National Park pika population. Pika populations near Bodie, California, have experienced decline as well, but not in the largest portion of the population which contains more suitable habitat and subsequently more pikas (Moilanen *et al.* 1998, p. 531; Nichols 2009, pp. 2, 5; Smith 2009, pers. comm.).

The relative number of unoccupied sites increased from the Sierra Nevada eastward into the Great Basin ranges (Millar and Westfall 2009, pp. 9, 11). Millar and Westfall (2009, p. 25) concluded that pika populations in the Sierra Nevada and southwestern Great Basin are thriving and show little evidence of extirpation or decline. Central Great Basin populations, on the other hand, appear less viable and more subject to disturbance from random events (Millar and Westfall 2009, p. 25).

In Utah, a population of pikas at Cedar Breaks National Monument was extirpated sometime between 1974 and 2006 (Oliver 2007, p. 5). As of 2009, the site still does not contain pikas (NPS 2009, p. 9). Pikas may have disappeared from sites near Lava Point in Zion National Park (NPS 2009, p. 13; Oliver 2007, pp. 7-8). However, pikas occur in other nearby locations (NPS 2009, p. 9; UDWR 2009, p. 20), demonstrating that suitable habitat capable of supporting a pika population still exists in southern Utah. Eighty-four percent of *Ochotona princeps schisticeps* suitable habitats in Utah are occupied (UDWR 2009, p. 7).

In summary, despite some of the uncertainty in trends across the current range of *O. p. schisticeps* populations, it is clear that some interior Great Basin pika populations (Beever *et al.* 2003, pp. 44, 53-54; Beever *et al.* 2009, p. 6) are being extirpated and moving upslope in elevation. The recent loss of low-elevation historical pika populations near the southern edge of historical range within the Great Basin appears to track the fossil record (see section on Historic Distribution and Habitat). The recent rate of population loss is more rapid than that suggested by paleontological records (Beever *et al.* 2003, p. 48). The majority of suitable habitat for *O. p. schisticeps* occurs outside of the Great Basin in the Sierra Nevada Mountain Range and a large study area in the Sierra Nevada Mountain Range shows the status appears to be stable.

Southern Rocky Mountain Subspecies (*Ochotona princeps saxatilis*)

Even in the absence of survey data for portions of the range of the Southern Rocky Mountain subspecies, *Ochotona princeps saxatilis,* available information suggests that the subspecies is stable across the majority of its range. Survey data are lacking for portions of the subspecies' range.

Pikas are well distributed in high-elevation areas of Colorado, which contains the majority of the subspecies' habitat. Fifty-eight of 62 historical sites surveyed had *O. p. saxatilis* populations persisting even at relatively low-elevation 2,743 to 3,048 m (9,000 to 10,000 ft) sites (CDOW 2009, p. 22; Peterson 2009, pers. comm.). Pika habitat is extensive in Colorado, and connectivity between pika habitat and populations appears sufficient to maintain a healthy population structure (CDOW 2009, p. 22).

In Utah, 92 percent of surveyed suitable pika habitat in the La Sal Mountains of eastern Utah was occupied (UDWR 2009, p. 7). There is no evidence of declines of American pika populations from historical levels in Utah (UDWR 2009, p. 11).

Density and trend data are not available for *Ochotona princeps saxatilis* populations in New Mexico (New Mexico Department of Game and Fish (NMDGF) 2009, p. 2; U.S. Forest Service (USFS) 2009, p. 1). New Mexico's CWCS lists the Goat Peak pika (was *Ochotona princeps nigrescens*, now included in *O. p. saxatilis*) as a subspecies of greatest conservation need as well as vulnerable and State sensitive (NMDGF 2006, pp. 55, 57). However, based on limited field observation, persistence of *O. p saxatilis* populations within New Mexico does not appear to reflect the pattern of recent extirpation observed within the interior Great Basin (NMDGF 2009, p. 3). Beever and Smith (2008, p. 3) have assigned *O. p. lasalensis* and *O. p. nigrescens*, which now belong to the *O. p. saxatilis* subspecies (see Table 1; Hafner and Smith 2009, p. 21), a status of vulnerable.

Despite some of the uncertainty in status across the range of *O. p. saxatilis* in New Mexico, the subspecies appears to be well distributed throughout the available habitat, especially in Colorado and Utah (CDOW 2009, p. 22; UDWR 2009, p. 11). There is no evidence indicating that the subspecies is in decline across its range in Utah and Colorado. Based on other status reviews (Beever and Smith 2008; NatureServe 2009b, p. 2), further monitoring may be warranted for *O. p. saxatilis* populations in the Jemez Mountains of New Mexico and La Sal Mountains of Utah to obtain a current status characterization of this portion of the subspecies range.

Cascade Mountain Subspecies (*Ochotona princeps fenisex*)

We have no trend data available for *Ochotona princeps fenisex* populations. In many locations where recent pika surveys have been conducted, no historical information exists for purposes of comparison. NatureServe has assigned the American pika a status of apparently secure (i.e., uncommon but not rare; some cause for long-term concern due to declines or other factors) in Oregon; secure (i.e., common; widespread and abundant) in the State of Washington; and secure in the Canadian province of British Columbia.

All eight survey locations in the Three Sisters Mountains and at McKenzie Pass, (located in the Cascade Mountain Range) have evidence of recent pika activity (Millar and Westfall 2009, p. 9). *O. p. fenisex* populations also occur in low-elevation (range of 121 to 255 m (397 to 837 ft)) habitat in the Columbia River Gorge, Oregon (Simpson 2009, p. 244). We have population estimates of *O. p. fenisex* from Mt. St. Helens from 1992 to 1994 (Bevers 1998, p. 42), but no information on the population status.

Survey data are lacking for a large portion of *O. p. fenisex* range, and no reports indicate population status. Based on the current pattern of known occupancy and the NatureServe (2009b, pp. 1-2) assessment, the subspecies is apparently secure.

Uinta Mountain Subspecies (*Ochotona princeps uinta*)

The Uinta Mountain subspecies, *Ochotona princeps uinta*, occurs solely within the State of Utah. The species is believed to have a relatively high occupancy rate (63 percent) with no evidence of declines from historical levels (UDWR 2009, pp. 7, 9, 11, 20). Based on available information, *O. p. uinta* populations appear stable.

Summary of American Pika Population Status

Most States and provinces that contain populations of *O. p. princeps* and *O. p. fenisex* have not determined the subspecies' status and do not have information on population trends. Information presented above suggests that *O. p. schisticeps* populations in some areas, primarily in the interior Great Basin, may be in decline. *O. p. saxatilis* populations appear to be well distributed throughout the majority of available habitat and *O. p. uinta* populations appear stable. Recent observed trends for *O. p. princeps, O. p. saxatilis*, *O. p. fenisex*, and *O. p. uinta* subspecies do not seem to mirror the loss of occupied pika sites and upward range contraction that has been reported for interior Great Basin populations. There is discrepancy among reported population trends within California, southern Utah, and New Mexico. Some information suggests that the species is vulnerable within some areas of California, southern Utah, and New Mexico (Beever and Smith 2008; NatureServe 2009b); however, other reports discussed above suggest that the *O. p. schisticeps* subspecies is stable or not in decline (Millar and Westfall 2009, p. 25; NMDGF 2009, p. 3; UDWR 2009, p. 11).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act and implementing regulations (50 CFR part 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: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to the American pika in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12–month finding on a petition to list the American pika or any of the five subspecies of pika, we considered and evaluated the best available scientific and commercial information. Below, we provide a summary of our analysis of threats to the five recognized subspecies of the American pika and to the species as a whole.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The following potential factors that may affect the habitat or range of American pika are discussed in this section: (1) Climate change; (2) livestock grazing; (3) native plant succession; (4) invasive plant species; and (5) fire suppression.

Climate Change

Climate change is a potential threat to the long-term survival of the American pika. Thermal and precipitation regime modifications may cause direct adverse effects to individuals or populations. Climate change has the potential to contribute to the loss of and change in pika habitat and enhance negative ecological and anthropogenic effects.

The Science of Climate Change

The Intergovernmental Panel on Climate Change (IPCC) concluded that global climate change is occurring and is caused by human activities, such as the burning of fossil fuels and clearing of forests (Forster *et al.* 2007, pp. 135-136). The IPCC is a scientific intergovernmental body established by the World Meteorological Organization and the United Nations Environment Programme "to assess scientific information related to climate change, to evaluate the environmental and socio-economic consequences of climate change, and to formulate realistic response strategies" (IPCC 2007, p. iii). The publications of the IPCC, specifically the four-volume *IPCC Fourth Assessment Report: Climate Change 2007*, constitute the best available science on global climate change. The *IPCC Fourth Assessment Report: Climate Change 2007* included the findings of three working groups composed of more than 500 lead authors and 2,000 expert reviewers and provided objective scientific guidance to policymakers on the topic of climate change (IPCC 2007, p. iii). We believe the IPCC information is the best available scientific information on global climate change at a broad scale.

Historical records analyzed by the IPCC demonstrate that global surface temperatures have risen (with regional variations) during the past 157 years, most strongly after the 1970s (Trenberth *et al.* 2007, p. 252). Globally, average surface temperatures have risen by 0.074 °C plus or minus 0.018 °C (0.13 °F plus or minus 0.03 °F) per decade during the past century (1906 through 2005) and by 0.177 °C plus or minus 0.052 °C (0.32 °F plus or minus 0.09 °F) per decade during the past quarter-century (1981 through 2005) (Trenberth *et al.* 2007, p. 253).

Changes in the amount, intensity, frequency, and type of precipitation have been summarized by the IPCC (Trenberth *et al.* 2007, p. 262). The warming of global temperatures has increased the probability of precipitation falling as rain rather than snow, especially in near-freezing situations, such as the beginning and end of the snow season (Trenberth *et al.* 2007, p. 263). In many Northern Hemisphere regions, this has caused a reduced snowpack, which can greatly alter water resources throughout the year (Trenberth *et al.* 2007, p. 263). As a result of thermal and precipitation regime changes, the IPCC expects the snowline (the lower elevation of year-round snow) in mountainous regions to rise 150 m (492 ft) for every 1 °C (1.8 °F) increase in temperature (Christenson *et al.* 2007, p. 886). These predictions are consistent with regional predictions for the Sierra Nevada in California that calculate that year-round snow will be virtually absent below 1,000 m (3,280 ft) by the end of the 21st century under a high emissions scenario (Cayan *et al.* 2006, p. 32).

Scientists at climate research institutions in the United States and in over a dozen countries worldwide, have

generated projections of future climatic conditions both globally and in the United States, which includes the range of the American pika. These projections were assessed and synthesized in the Fourth Assessment Report of the IPCC. The United States Global Change Research Program (USGCRP) coordinates climate change research from 13 departments and agencies and was mandated by Congress in the Global Change Research Act of 1990 to, "assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change." The IPCC has predicted global average surface warming during the 21st century is likely between 1.1 and 6.4 °C (2.0 and 11.5 °F), depending on the emissions scenario, and taking into account other sources of uncertainty in the projections (Solomon *et al.* 2007, p. 70, Table TS. 6). The recent USGCRP assessment of climate impacts (Karl *et al.*, 2009, pp. 129, 135) also adopts the IPCC range of temperature projections for different United States regions.

On a regional scale, North America is likely to exceed the global mean warming in most areas (Christenson *et al.* 2007, p. 850). Specifically, warming is likely to be largest in winter in northern regions of North America, with minimum winter temperatures likely rising more than the global average (Christenson *et al.* 2007, p. 850). Across 21 global climate models using a mid-level emissions scenario, the IPCC predicted that the average annual temperature in western North America (covering the entire range of the American pika) will increase between 2.1 and 5.7 °C (median 3.4 °C) (3.8 and 10.3 °F (median 6.1 °F)) during the 21st century (Christenson *et al.* 2007, p. 856). The 2009 USGCRP impacts report projects the Southwest to warm 2 to 6 °C (4 to 10 °F) relative to the 1960-1979 baseline (Karl *et al.* 2009, p. 129) and the Northwest to warm by "another 2 to 6 °C (3 to 10 °F)" by the end of the century (Karl *et al.* 2009, p. 135).

In the 20th century, the Pacific Northwest and western United States experienced annual average temperature increases of 0.6 to 1.7 °C (1.1 to 3.1 °F) and 1.1 to 2.8 °C (2.0 to 5.0 °F), respectively (Parson *et al.* 2001, p. 248; Smith *et al.* 2001, p. 220). Temperature increases are expected to affect precipitation, snowpack, and snowmelt in the range of the American pika. Climate warming corresponds with a reduced mountain snowpack (Mote *et al.* 2005 and Regonda *et al.* 2005 cited in Vicuna and Dracup 2007, p. 330; Trenberth *et al.* 2007, p. 310) and a trend toward earlier snowmelt in western North America (Stewart *et al.* 2004, pp. 217, 219, 223). The IPCC concluded that snow-season length and depth of snowpack are very likely to decrease in most of North America (Christenson *et al.* 2007, p. 850). Leung *et al.* (2004, p. 75) concluded that future warming increases in the western United States will cause increased rainfall and decreased snowfall, resulting in reduced snow accumulation or earlier snowmelt. Similarly, Rauscher *et al.* (2008, p. 4) concluded that increased temperatures in the late 21st century could cause early-season snowmelt-driven runoff to occur as much as 2 months earlier than presently in the western United States.

The above information applies at large, general scales. To understand the changes likely to occur in pika habitat, we worked with the National Oceanic and Atmospheric Administration (NOAA) to assess the best available climate science across the range of the American pika (NOAA 2009, p. 4). The NOAA study reviewed historical climate observations and climate projections of surface temperatures for 20–year periods centered on 2025, 2050, and 2100 in alpine and subalpine mountain areas that are habitat for the American pika. Because model projections for precipitation are less reliable than for temperature in this region, their report focused primarily on temperature (NOAA 2009, pp. 10, 15). We primarily relied on this report to perform deterministic risk assessments of increased temperature in the foreseeable future to American pika populations throughout their range in the western United States. In addition, we used information on historical climate observations to supplement previous peer-reviewed publications and other reports from the literature to assess how temperature increases may have affected pikas in recent decades.

The NOAA's analysis (NOAA 2009, p. 9) revealed an evident warming trend between 1950 and 2007 in the western United States. Strong warming trends occurred across 89 percent of the western United States and 37 to 42 percent of western United States mountain ranges (Das *et al.* 2009, cited in NOAA 2009, p. 9). Within the western United States, warming was documented and is attributable to anthropogenic climate change (Bonfils *et al.* 2008, cited in NOAA 2009, p. 11). Some studies (Barnett *et al.* 2008, p. 1080; Pierce *et al.* 2008, p. 6436) have estimated that up to about half of the trends in temperature and associated hydrologic variables can be attributed to anthropogenic causes. Natural climate variability may account for the remainder of the observed climate change in the western United States, and will likely play a role in the future climate of that region.

Changes in the hydrologic cycle, including timing of snowmelt runoff, amount of precipitation falling as snow versus rain, and spring snow water equivalent, have been documented in the mountains of western North American and attributed to anthropogenic causes (multiple references cited in NOAA 2009, p. 8), with the exception of some high-elevation areas, especially in the Rocky Mountains. Most of the reduction in snowpack in the western United States has occurred below about 2,500 m (8,200 ft) (Regonda *et al.* 2005, cited in NOAA 2009, p. 9). This elevation is near the lower limit of American pikas' elevation range (Smith and Weston 1990, p. 2); therefore, it can be inferred that the majority of pika habitat in mountainous areas has not experienced the large changes in the hydrologic cycle seen at lower elevations.

Climate Change and Pika Biology

Several climate variables are relevant to persistence of American pika populations because past and present trends in climate have been identified as having important physiological, ecological, and demographic consequences. These climate variables include, but may not be limited to, number of extremely hot or cold days, average summer temperatures, and duration of snow cover (Beever *et al.* 2009, pp. 5, 10, 16-18).

In general, pika biologists agree that temperatures below the habitat surface, such as in talus crevices, better approximate the conditions experienced by individual pikas because pikas rely on subsurface refugia to escape hotter summer daytime temperatures and obtain insulation in the colder winter months (Beever *et al.* 2009, p. 9). Therefore, surface temperature variables may not be as useful as subsurface temperatures for predicting persistence or extirpations of pika populations in the face of climate change. However, data on subsurface temperatures within pika habitat vary depending on site-specific conditions and are largely unavailable.

Beever *et al.* (2009, p. 18) found that average summer (June-July-August (J-J-A)) below-talus temperature was the best predictor of pika extirpation. They also discovered two other patterns: (1) The number of extremely cold and hot days based on estimates of below-talus temperatures was useful in predicting patterns of pika extirpations (Beever *et al.* 2009, p. 18); and (2) the majority of pika-extirpated sites were covered with

snow for only 2 weeks or less; whereas, the majority of pika-extant sites had continuous snow cover for greater than 2 weeks and as long as 8.2 months (Beever *et al.* 2009, p. 16). Because American pikas are small and do not hibernate, reduced snowpack can mean a lack of insulation from cold winter temperatures (Morrison and Hik 2008, p. 905). Exposure to colder temperatures could have an adverse effect on pika individuals and populations as a result of increased energy expenditure during a time of year where food resources are limited (Smith *et al.* 2004, p. 5). However, pika biologists have not determined the actual effects of acute cold-stress on pikas (Beever *et al.* 2009, p. 29).

The population collapse of a closely related pika species, the collared pika (*Ochotona collaris*), was related to warmer winters that resulted in low snow accumulation (and, therefore, poor insulation value), increased frequency of freeze-thaw events, icing following winter rains, and late winter snowfalls that delay the start of the growing season (Morrison and Hik 2008, pp. 104-105, 110). Following a decline in population abundance, populations recovered in subsequent years, in some cases to near pre-decline levels (Morrison and Hik 2007, pp. 902-903). Declines in snowpack and earlier montane snowmelt are predicted to occur within the next century, and winter survival of the American pika may consequently decrease. Alternatively, earlier snowmelt could improve pika survival and positively affect American pika populations (Morrison and Hik 2007, p. 905). Based on the available information there does not appear to be a direct line of evidence linking reduced snowpack to reductions in American pika populations.

Several lines of evidence have been used to suggest that thermal stress will adversely impact the American pika. Wolf *et al.* (2007, p. 43) pointed out that increasing temperatures will eliminate cool, moist refugia in talus habitat, causing individuals to be unable to thermoregulate in summer months. However, Millar and Westfall (2009, p. 25) stated that non-rock-ice features will likely become warmer and more marginal for pikas, but environments with rock-ice features are highly likely to remain buffered against temperature change due to the insulation of rock features. Millar and Westfall (2009, p. 10) documented that 83 percent of over 400 surveyed pika sites in the Sierra Nevada and Great Basin occurred in rock-ice landforms, indicating that pikas have a preference for these types of environments. Therefore, we expect pika habitat that contains rock-ice features or features that are similar to rock-ice (i.e., talus or talus-like environments) to be buffered from rising surface temperatures. We are not aware of any studies that have identified the distribution of these types of features, and thus we are not able to use that type of information to help us increase the sensitivity of our climate change threats analysis.

Wolf *et al.* (2007, p. 44) also state that, even if the talus refugia remain cool, ambient external temperatures may reduce an individual's ability to forage during midday. They assert that if pika individuals cannot adequately forage in the summer months, they may not have the required body mass or haypile volume needed for winter survival. However, pikas at low elevations restrict their activity when temperatures exceed their thermal tolerance but are able to obtain enough food and overwintering vegetation (hay pile) during the morning and evening so that long-term population persistence is not affected (Smith 1974a, pp. 1117-1118; Smith 1974b, pp. 1370-1372; Smith 2009, p. 4).

Warmer summer temperatures may affect the ability of juvenile pikas to successfully disperse and colonize new areas (Smith 1974a, p. 1112; Smith 1978, p. 137; Wolf *et al.* 2007, p. 44). Because dispersal occurs on the habitat surface, dispersing pikas are exposed to the hottest temperatures on the surface of their environment. Hotter surface temperatures may decrease the distance juveniles are able to travel in search of new habitat patches, but primarily in warmer, low-elevation habitats. A pika metapopulation range may decline if juveniles are unable to colonize new patches or immigrate to other populations.

Wilkening (2007, pp. 36-37) suggested that a greater depth of available talus should be positively associated with pika persistence, and pika populations located in habitat with shallow talus or small diameter rocks of similar size might be susceptible to adverse effects of increasing temperatures. With the appropriate assemblage of talus structural features, below-talus microclimate might be less thermally variable and more suitable for pikas (Millar and Westfall 2009, p. 21). Studies from Lava Beds National Monument support this hypothesis by demonstrating that talus depth (amount of insulation) was one of the strongest predictors of pika occurrence (Ray and Beever 2007, p. 45). Based on these data, it is likely that habitat with sub-optimal talus characteristics would be less likely to support pika populations under projected warming scenarios.

American Pika Responses to Climate Change

Past and Present Trends

Recent climatic change, including increased temperatures, freeze-free periods, and changes in precipitation is an important driving force on ecosystems and has affected a wide variety of organisms with diverse geographic distributions (Walther *et al.* 2002, pp. 391-392; Parmesan and Yohe 2003, p. 41). Many plant and animal species have advanced the timing of spring events (e.g., plant flowering or bird migration) and experienced a shift in latitudinal and altitudinal range (i.e., movement to higher latitudes or higher altitude) (Walther *et al.* 2002, pp. 391-392).

The biology of the American pika makes the species a useful indicator of changing climatic conditions and useful to test extinction theory (Smith *et al.* 2004, p. 5; Smith 2009, p. 2). The species lives in a very narrow ecological habitat (primarily talus) that is frequently fragmented or patchily distributed. They are generally poor dispersers, and thus the narrow niche may expose some populations to negative effects associated with increasing temperatures (Smith 1974b, p. 1372; Smith 2009, p. 2). However, pikas also may exhibit considerable behavioral and physiological flexibility that may allow them to persist in environmental conditions that humans perceive to be outside of the species' ecological niche (Smith 2009, p. 4).

The distribution of American pikas from prehistoric times to the present is a result of changing climatic conditions. Pika population occurrences in the southern Rocky Mountains are closely tied to the past and present distribution of alpine permafrost conditions, with altithermal (i.e., a dry postglacial interval centered about 5,500 years ago during which temperatures were warmer than at present) warming accounting for 66.7 percent of all post-Wisconsinan period population extirpations (Hafner 1994, p. 375). Climate change and subsequent impacts on vegetation determined the distribution of the American pika in the Great Basin (Grayson 2005, p. 2103). The present distribution of the American pika in the Great Basin is approximately 783 m (2,568 ft) higher in elevation than the distribution during the late Wisconsinan and early Holocene periods (Grayson 2005, p. 2103), demonstrating an elevational retreat tracking colder microclimates.

While these trends, acting over long timescales, demonstrate the role of historical climate conditions in shaping pika distribution, we have evidence that recent climate change has caused additional contractions in the American pika's range within some localities.

NOAA (2009, pp. 11-14) analyzed past climate observations at 22 sites known to be recently or currently occupied by American pikas. They analyzed the observations in detail for a subset of sites along the southern Nevada/California border, southern Oregon, and northern California, where recent pika extirpations were documented in the Great Basin; however, NOAA's analyses were not limited to these regions (see Figure 1 in NOAA 2009, p. 1). Along the southern Nevada/California border, the summers of the last decade showed a pronounced warming trend (NOAA 2009, p. 12). By comparison, nearly all extirpated sites within the Great Basin are associated with relatively low elevations with little suitable habitat accessible nearby at higher elevations, which is in agreement with previous reports (Beever *et al.* 2003, p. 48; Wilkening 2007, p. 32). Southern Oregon and northern California experienced less pervasive warming over the past 75 years in these regions when compared to Nevada (NOAA 2009, p. 14). However, the last 30 years in southern Oregon and northern California feature a pronounced warming in the summer (NOAA 2009, p. 14). Based on observations of climatology in areas known to contain American pikas, it is apparent that pikas have been and currently are being exposed to warmer temperatures, which may correlate with extirpations in Nevada, Oregon, and California.

The American pika appears to be experiencing habitat shifts in some areas, including an increasing rate of upslope movement (Beever 2009b, pers. comm.); the disappearance of populations at relatively lower elevations and hotter sites (Beever *et al.* 2003, pp. 45, 49; Beever *et al.* 2009, pp. 16-18); and loss of populations from habitats that do not maintain adequate snowpack levels (Smith *et al.* 2004, p. 5; Morrison and Hik 2008, p. 905; Beever *et al.* 2009, p. 16).

A few reports have documented 20th century range contractions in both the Great Basin and the Sierra Nevada. A study of Great Basin pika populations found that 7 of 25 populations, which is a subset of all pika-occupied sites within the Great Basin, appeared to have experienced extirpations between 1994 and 1999 (Beever *et al.* 2003, p. 37). Of these, one site was subsequently determined to be occupied (Wilkening 2007, p. 26). The most recent information indicates that 9 out of 25 (36 percent) historically occupied pika sites within the Great Basin have been extirpated (Krajick 2004, p. 1602; Wilkening 2007, p. 46). These 25 sites in the Great Basin were first described in 1946 by Hall (pp. 587-593). Elevation is an important parameter in models predicting the persistence of pika populations, and thermal effects (because it is typically hotter at lower elevations) are the primary reason for recent extirpations. Thermal effects have also influenced recent persistence trajectories of Great Basin populations of pikas (Beever *et al.* 2003, pp. 43, 46-47; Beever 2009, pp. 1, 3). Other anthropogenic factors may affect persistence to a lesser degree (Beever 2009, pp. 1, 3), such as proximity to roads, habitat size, and livestock grazing, particularly when assessed cumulatively with environmental conditions (Beever *et al.* 2003, p. 46).

Millar and Westfall (2009, p. 12) similarly documented that unoccupied historical pika sites were associated with significantly higher warmer maximum surface temperatures than occupied sites. In general, their survey sites in the Great Basin had colder winter and warmer summer temperatures than their survey sites in the Sierra Nevada (Millar and Westfall 2009, p. 13). The authors also documented that unoccupied pika sites were significantly more likely to be associated with southern aspects, which receive more direct sunlight and, therefore, may experience warmer temperatures, than occupied pika sites (Millar and Westfall 2009, p. 11).

Long-term responses of small mammal communities to recent climate change were studied in the Sierra Nevada (Moritz *et al.* 2008, pp. 261-264). Because the study area has been protected since 1890, responses to climate change were not confounded by land-use effects (Moritz *et al.* 2008, p. 261). Range contractions were documented in high-elevation species and upward range expansion in low-elevation species (Moritz *et al.* 2008, p. 262). The lower range limit of the American pika within their study site shifted 153 m (502 ft) upslope from approximately 1920 to present (Moritz *et al.* 2008, p. 263). Based on the Great Basin and Sierra Nevada studies, temperatures provide the most likely explanation for observed range shifts in American pika populations.

Despite the trends of increasing pika extirpations in the Great Basin and upward range expansion as a response to increasing temperatures, there is ample evidence suggesting the species can survive and thrive in habitats with relatively hot surface temperatures. American pika populations thrive at a low-elevation (2,550 m (8,366 ft)) site in the mountains near Bodie, California, where August daily maximum shade temperatures approach 30 °C (86 °F) at the hottest time of day (Smith 1974a, p. 1117; Smith 1974b, p. 1369). Pikas persist here, because they reduce activity during hot mid-day temperatures by retreating to significantly cooler conditions under the talus surface (MacArthur and Wang 1974, p. 357; Finn 2009a, pers. comm.; Millar and Westfall 2009, pp. 13-14), and perform necessary daily activities during the cooler morning and evening periods (Smith 1974b, p. 1370). Despite altering their behavior in response to high temperatures, pikas maintain high birth and low mortality rates (Smith 1974a, p. 1117).

American pikas also persist in the hot climates of Craters of the Moon and Lava Beds National Monuments (Idaho and California, respectively). Average and extreme maximum surface temperatures in August at these sites are 32 °C (90 °F) and 38 °C (100 °F), respectively (Western Region Climate Center 2009, p. 1). Pika persistence at these sites is noteworthy because the climate is an estimated 18 to 24 percent drier and 5 to 11 percent warmer during the hottest months of the year than experienced at the interior Great Basin locations where pikas have been extirpated (Beever 2002, pp. 26-27).

Three habitat characteristics seem important to these two California and Idaho populations: large, contiguous areas of rocky, volcanic habitat; average or greater than average amounts of accessible vegetation; and microtopography with rocks large enough for subsurface movement and tunneling by pikas (Beever 2002, p. 28). With suitable structural habitat, American pikas persist in climates that typically would be considered too hot for the species.

Pikas persist at low-elevation (2,400 to 2,500 m (7,874 to 8,202 ft)), relatively warm sites in areas adjacent to human disturbance and lacking in accessible vegetation (Smith 2009, p. 5). Pikas exist in environments not typically viewed as suitable pika habitat. For example, pikas were found at a low-altitude (2,400 to 2,500 m (7,874 to 8,202 ft)) site adjacent to an area of human land-use that was almost barren of vegetation; yet, biologists found a robust haypile (Smith 2009, p. 5). This information suggests the species tolerates a wider range of environmental conditions than previously thought.

Habitat structure appears to be just as or more important of a predictor of pika population persistence as temperature. The amount of talus habitat appears to be the strongest individual variable useful for predicting persistence. In 17 of 18 instances, populations in mountain ranges with moderate to large amounts of talus remained extant (Beever *et al.* 2003, pp. 43, 47; Wilkening 2007, p. 33). Pika island (patch) size was the most important persistence factor near Bodie, California (Smith 1974a, p. 1114).

We believe recent American pika range contractions that have occurred or are occurring in one locality or region should not be assumed to have occurred or be occurring in other areas. For example, American pika have been documented moving upslope in the Great Basin and Yosemite National Park; however, populations in the Sierra Nevada occur 650 m (2,132 ft) below historically known low-elevation pika sites (Millar and Westfall 2009, p. 16), and therefore have not moved upslope in this region. Given the available information we conclude that the species range has not contracted upslope on a range-wide basis in the recent past and changes in the elevation range of the species appear to be site-specific. Persistence of lower elevation sites is likely related to local climate, habitat structure, geomorphology, and intra-talus microclimate (Millar and Westfall 2009, pp. 16-23).

Based on information we have obtained from a variety of sources, it is apparent that American pika have responded to long-term climate change (10,000 to 40,000 years) as seen by the current patchy distribution of the species at generally higher elevations, particularly in the southern portion of it range. The species also appears to be responding to shorter term climatic change in the last century in some locations. Some lower elevation populations in the southern portions of the species range have been extirpated and some have shown evidence of upslope movement in response to increased temperatures. Responses of American pika to changing climatic conditions are variable as a result of localized environmental conditions.

We are unaware of any losses of American pika populations outside the interior Great Basin as a response to climate change (see Population Status section). We acknowledge that there is evidence that eastern Sierra Nevada and Great Basin pikas may be responding to recent climate change (Beever *et al.* 2009, p. 18). These effects are most prevalent at low elevations.

Future Trend Projections

The timeframe over which the best available scientific information allows us to reliably assess the effect of climate change on the American pika is a critical component of our status review and finding. The projections generated by NOAA (2009) for surface temperature in pika habitat centered on 2025, 2050, and 2100, but the study concludes that projection results over the next 30 to 50 years are more reliable than projections over the next 80 to 100 years (NOAA 2009, p. 8).

Until about 2050, greenhouse gas emissions scenarios (reviewed in IPCC Special Report on Emission Scenarios in 2000 as cited in NOAA 2009, p. 8), which are an essential component of any climate change assessment, result in a similar range of projections of global and regional climate change (NOAA 2009, p. 8). Temperature increases over the next 30 to 50 years are relatively insensitive to the emissions scenarios used to model the projected change. Some warming as projected in the greenhouse gas emissions scenarios is anticipated as a result of greenhouse gases already in the atmosphere that will influence future climate; however, this is more so for mid-century versus late century (Meehl *et al.* 2007, p. 749). For a given emissions scenario there is still a range in the spread of the model projection. This spread is due both to details in the formulation of the models that differ among the individual models and to natural variability in climate that is simulated by the models. Because increases of greenhouse gas emissions have lag effects on climate and projections of greenhouse gas emissions, it can be interpreted with greater confidence until approximately mid-century, model projections for the next 30 to 50 years (centered on 2050) have greater reliability than results projected further into future.

The range of projections for surface temperatures beyond mid-century will partially depend on human population growth, technological improvements, societal and regulatory changes, and economic growth effects to greenhouse gas emissions. Reports from the IPCC Fourth Assessment (Meehl *et al.* 2007, p. 749) and Mote and Salatheá (2009, p. 30) reach a similar conclusion about the reliability of projection results until mid-century versus results for the end of the 21st century. On the basis of NOAA's report (2009, p. 8) and other supplemental information (Meehl *et al.* 2007, p. 749; Mote and Salatheá 2009, p. 30), we have determined that climate changes for 2025 and 2050 are more reliable than projections for the second half (up until 2100) of the 21st century. As such, we consider the time period from 2025 to 2050 to represent the foreseeable future for the purposes of our evaluation and this finding. Nonetheless, it should be noted that the IPCC projections indicate continued global and regional warming into the second half of this century, and if emissions follow the higher scenarios, warming in 2090 could be double that in 2050.

There are a few studies that attempt to project future pika trends. McDonald and Brown (1992, pp. 409-415) applied the theory of island biogeography to isolated mountaintop ranges in the Great Basin of western North America and modeled potential extinctions brought on by changing climatic conditions. They predicted that the American pika would be locally extirpated within the next century from four of five mountain ranges in the Great Basin assuming a less than 3 °C (5.4 °F) increase in temperature (McDonald and Brown 1992, p. 411, Table 1). Broader ecological results of the model indicate that mountain ranges would lose 35 to 96 percent of their boreal habitat and 9 to 62 percent of boreal mammal species, depending on the mountain range in question (McDonald and Brown 1992, p. 413). At this point, the fate of pika populations occupying portions of the five mountain ranges discussed in McDonald and Brown (1992) is unclear because pikas still exist in the five mountain ranges analyzed and we are aware of only one metapopulation that has been extirpated from one of the five mountain ranges in the last 15 years (Wilkening 2007, p. 46).

Other researchers have used the species-climate envelope modeling approach (Pearson and Dawson 2003, p. 361; Arauájo *et al.* 2005, p. 529), also known as ecological niche or bioclimatic envelope modeling, to generate projections of altered American pika distributions by the late 21st century. Essentially, a species' ecological niche is the range of biological and physical conditions under which an organism can survive and grow (Hutchinson 1957, cited in Pearson and Dawson 2003, p. 362). A bioclimatic envelope model is one that relates a species current distribution to its climatic driving forces, and then applies scenarios of future climate change to project a redistribution of the species' climate space (Pearson and Dawson 2003, p. 361). Bioclimatic models typically consider only climatic variables and do not include other environmental, biotic or abiotic, factors that influence the distribution of species. These models are potentially

powerful tools for predicting the potential effects of climate change to animal distributions, including those of American pikas; however, Guisan and Thuiller (2005, pp. 1003-1004) and Hijmans and Graham (2006, p. 2) state that the usefulness of these models for guiding policymaking and conservation planning are limited.

In one such model, Loarie *et al.* (2009, p. 2) predicted that 9 of 427 (2 percent) extant pika sites will have an annual extirpation probability greater than 5 percent in 2010. By 2099, they predict the annual extinction probability of extant pika sites increases to 21 percent (range of 2 to 30 percent) under a medium emissions scenario (Loarie *et al.* 2009, p. 5). They also predict that the percentage of 427 sites with a greater than 50 percent probability of persisting from 2010 through 2099 is 60 percent (range of 51 to 81 percent) under a medium emissions scenario (Loarie *et al.* 2009, p. 5). In the Great Basin, persistence probabilities in 2099 will be lower than the range-wide average, equaling 44 percent under the medium emissions scenario. According to this model, only 11 percent of pikas within the species current range have a very high (95 percent) probability of surviving from 2010 through 2099. By 2100, the areas with the highest predicted probabilities of persistence occur primarily in the high elevations of the southern Rocky Mountains, Yellowstone National Park region, portions of the Northern Rocky Mountains, Uinta Mountains, Olympic Mountains, and a small portion of the Sierra Nevada (Loarie *et al.* 2009, p. 13, Figure 3).

Such extensive loss of suitable pika habitat across the range of the American pika in the United States has been projected by others as well. Trook (2007, pp. 6-16) used a similar approach as Loarie *et al.* (2009, pp. 2-5), and predicted dramatic declines in pika range over the next 80 years for projections centered on 2090 (10–year average from 2085 to 2095). His projections estimated the amount of suitable habitat for low, medium, and high emission scenarios would represent an 81 percent decrease, 86 percent decrease, and 98 percent decrease in suitable habitat across the range of the species in the United States (Trook 2007, p. 19). Under this model, areas that would experience the greatest loss, or complete disappearance, of suitable habitat include the Cascade Mountains, the northern Rocky Mountains, and isolated mountain ranges within Nevada (Trook 2007, p. 19). Galbreath *et al.* (2009a, pp. 13-16) also predicted extensive loss of suitable pika habitat under a scenario where atmospheric carbon dioxide (a major greenhouse gas) concentrations are double their current levels (Galbreath *et al.* 2009, p. 20). Particular losses were projected in the Sierra Nevada and throughout the southwestern portion of the species range (Galbreath *et al.* 2009, pp. 20, 45, Figure 5c).

As stated earlier, Guisan and Thuiller (2005, pp. 1003-1004) and Hijmans and Graham (2006, p. 2) state that the usefulness of bioclimatic envelope models is limited for several reasons, which include making unrealistic assumptions of species distributions being at equilibrium with current climate, interpreting species-climate relationships as if indicating causal mechanisms, and ignoring the biotic interactions between species (Pearson and Dawson 2003, p. 361; Hampe 2004, pp. 469-470). Climate can be considered a dominant factor at the continental scale, while at more local scales factors such as topography and land-cover type become important (Pearson and Dawson 2003, p. 368). Such is the case of the American pika, a species that is not only generally tied to cool, moist climate, but also is reliant upon particular topographical features and land-cover types such as talus, rock-ice features, and volcanic substrates and the features (such as caves or crevices) contained within them. If conditions at the landscape level are satisfied, biotic interactions and microclimate may become even more significant to species such as the American pika (Pearson and Dawson 2003, p. 368). Climate forecasts of species distributions are intended to be accurate at spatial resolutions at much coarser levels than the resolution of field data that have been collected for American pikas (Beever *et al.* 2009, p. 19).

We point out the following reasons for considering the bioclimatic envelope models discussed above as not being useful for the American pika status review:

(1) All three reports (Galbreath *et al.* 2009a, p. 14; Loarie *et al.* 2009, p. 5; Trook 2007, p. 6) provide projections for beyond mid-century; as stated earlier, we have determined that climate changes predictions for 2025 and 2050 are more reliable than projections for the second half (up until 2100) of the 21st century.

(2) Authors used relatively few explanatory (climate) variables in modeling current and future suitable habitat; none of the variables included those which are known to be important predictors of pika persistence, such as land-cover type (e.g., talus), microclimate, or other physical habitat features.

(3) Bioclimatic envelope models for pikas base persistence projections on surface temperatures. However, we determined that temperatures below the habitat surface, such as in talus crevices, are more important for survival of individual pikas and are a better predictor of persistence (see Climate Change and Pika Biology section).

(4) None of the models factor in the pika's documented behavioral ability to avoid warmer temperatures during the hottest part of the day.

Because of the problems associated with relying solely on available bioclimatic envelope models, we partnered with NOAA to assess temperature projections for the western United States and 22 pika-relevant sites representing the 5 subspecies (*Ochotona princeps princeps* (Northern Rockies), *O. p. saxatilis* (Southern Rockies), *O. p. fenisex* (Coast Mountains and Cascade Range), *O. p. schisticeps* (Sierra Nevada and Great Basin), and *O. p. uinta* (Uinta Mountains and Wasatch Range of Central Utah) (Hafner and Smith 2009, pp. 16-25) across the range of the species (NOAA 2009, pp. 1, 15-21). This information was useful in our analysis to determine if pikas would experience significant risk of extirpation within the foreseeable future.

The average projection of annual mean temperature increase for much of the interior western United States by 2050 is approximately 2.2 °C (range from 1.4 to 3.0 °C (4 °F (range from 2.5 to 5.5 °F)) (NOAA 2009, p. 15). Summers are predicted to warm more than winters (mean of 2.8 °C (5 °F) vs. 1.7 °C (3 °F)). In general, the dominant precipitation pattern in North America projects a wetter climate in northern portions of North America and a drier climate in the southwestern United States (NOAA 2009, p. 15); however, as previously stated, for much of the range of the American pika, precipitation projections diverge and are not in agreement (NOAA 2009, p. 15). The Washington Climate Change Impacts Assessment has projected an increase in average annual Pacific Northwest temperature of 1.1 °C (2.0 °F) by the 2020s and 1.8 °C (3.2 °F) by the 2040s when compared to climate observations from 1970 to 1999 (Mote and Salatheá 2009, p. 21). By 2050, the summer J-J-A climate has moved northward in latitude and the climate zones of the valleys and mountains has migrated upward in elevation (NOAA 2009, p. 16).

Projections for climate at 22 sites anchored on pika observations tell a similar story to what is projected for the

western United States. Using established methods and existing gridded temperature datasets (see NOAA 2009, pp. 15-20), NOAA generated site-specific projections for surface temperatures within elevation bands known to harbor pikas (Table 1). In Table 1, we present NOAA's calculations for the J-J-A mean surface temperatures from 1950 to 1999 (Column 4) and compare them to J-J-A mean surface temperature projections for 2050 (Column 5) using a medium emissions scenario. The projections shown here are for the average of the climate model projections considered. The NOAA study (2009, p. 19) also considers high- and low- end model projections. High-end projections are approximately 1 °C (1.8 °F) warmer than the multi-model average, and would indicate increased risk at a number of sites, including at the maximum elevations in some study areas.

For 2025 and 2050, projections from all three emissions scenarios (low, medium, and high) are nearly the same; therefore, their datasets reflect projected surface temperatures into the foreseeable future (a 20–year average centered on 2050). Upon calculating the J-J-A mean historical and projected surface temperatures at a mean elevation of the temperature gridcell (Column 2 in Table 1), NOAA (2009, pp. 26-27) performed a simple calculation using lapse rates (the change in temperature with changes in elevation) to determine the projected temperatures at the mean elevation to the actual minimum and maximum elevation of pika observations (Column 3 in Table 1) used in the analysis.

TABLE 1. HISTORICAL (1950 – 1999) CLIMATOLOGY AND J-J-A PROJECTIONS FOR AVERAGE DAILY TEMPERATURE AT ELEVATION FOR 22 HISTORICAL AMERICAN PIKA STUDY AREAS.

Temperature range of minimum and maximum elevation sites in each study area based on a simple lapse rate adjustment is shown in parentheses. Bold text indicates that the locations in the study area at the elevation of the gridcell used in the temperature analysis by NOAA, or at the minimum or maximum elevations, may be at higher risk from increased J-J-A temperature. Measure of risk is equal to or greater than 16.2 °C (61.2 °F). Multi-model average projections shown here. The NOAA study (NOAA 2009) also considers high- and low- end model projections.

SITE	Mean Elevation of Temperature Analysis (ft)	Range of Pika Observations (ft)	Historical J-J-A Mean Surface Temperature (°C)	Projected J-J-A Mean Surface Temperature (°C)
O. p. fenisex				
Crater Lake	7,121	6,436 – 7,660	10.6 (12.0 - 9.6)	13.2 (14.5 – 12.1)
Mt. Hood/Three Sisters	8,062	6,242 – 7,621	9.85 (13.5 – 10.7)	12.4 (16.0 – 13.3)
Mt. St. Helens	3,691	3,000 – 4,200	13.3 (14.3 – 12.5)	15.7 (**16.7** – 14.9)
North Cascades/Mt. Baker	5,237	3,800 – 7,210	10.0 (12.9 – 6.1)	12.5 (15.4 – 8.6)
O. p. princeps				
Bighorn Mtns	12,048	*	7.2 (NA)	10.2 (NA)
Clearwater Mtns	8,141	*	11.1 (NA)	14.1 (NA)
Gallatin National Forest	9,167	9,180	10.4 (NA)	13.4 (NA)
Glacier National Park	6,158	4,574 – 8,337	11.0 (14.1 – 6.7)	13.7 (**16.9** – 9.4)
N. Wasatch Mtns	9,755	8,472 – 10,800	13.2 (15.7 – 11.1)	**16.5** (**19.0** – 14.4)
Ruby Mtns	9,676	8,664 – 10,413	14.1 (16.1 – 12.6)	**17.4** (**19.4** – 15.9)
Sawtooth Range	9,085	6,857 – 8,382	11.3 (15.7 – 12.7)	14.4 (**18.8** – 15.8)
Wind River/Bridger-Teton	12,154	*	6.3 (NA)	9.6 (NA)
O. p. saxatilis				
Sangre de Cristo Mtns	11,197	7,562 – 12,263	9.8 (**17.0** – 7.7)	12.7 (**19.9** – 10.6)
Southern Rockies	10,781	9,715 – 14,000	12.1 (14.2 – 5.7)	15.2 (**17.3** – 8.8)
O. p. uinta				
Eastern Uintas	11,916	9,810 – 12,076	7.5 (11.6 – 7.2)	10.8 (15.0 – 10.5)
O. p. schisticeps				
Bodie Mtns	8,841	8,530 – 8,635	12.3 (12.9 – 12.7)	15.2 (15.8 – 15.6)
SE Oregon	7,600	5,800 – 7,925	12.8 (**16.4** – 12.2)	15.9 (**19.4** – 15.2)
Monitor Hills	8,250	8,105 – 8,822	13.0 (13.3 – 11.9)	16.0 (**16.3** – 14.8)
Sierras/Yosemite	10,270	9,657 – 11,160	9.0 (10.2 – 7.2)	11.8 (13.0 – 10.0)

TABLE 1. HISTORICAL (1950 – 1999) CLIMATOLOGY AND J-J-A PROJECTIONS FOR AVERAGE DAILY TEMPERATURE AT ELEVATION FOR 22 HISTORICAL AMERICAN PIKA STUDY AREAS.—Continued

Temperature range of minimum and maximum elevation sites in each study area based on a simple lapse rate adjustment is shown in parentheses. Bold text indicates that the locations in the study area at the elevation of the gridcell used in the temperature analysis by NOAA, or at the minimum or maximum elevations, may be at higher risk from increased J-J-A temperature. Measure of risk is equal to or greater than 16.2 °C (61.2 °F). Multi-model average projections shown here. The NOAA study (NOAA 2009) also considers high- and low- end model projections.

SITE	Mean Elevation of Temperature Analysis (ft)	Range of Pika Observations (ft)	Historical J-J-A Mean Surface Temperature (°C)	Projected J-J-A Mean Surface Temperature (°C)
S. Wasatch Mtns	10,520	8,472 – 10,800	12.9 (**16.9** – 12.3)	16.0 (**20.0** – 15.4)
Toiyabe Mtns	9,092	7,896 – 11,023	12.4 (14.8 – 8.6)	15.5 (**17.9** – 11.7)
Warner Mtns	7,326	5,429 – 8,267	14.8 (**18.6** – 13.0)	**17.8** (**21.5** – 15.9)

* Local summit chosen as a representative site. Range of pika observations not available. NA = Not Available.

The resulting 2050 J-J-A projections for surface temperatures are consistently higher than the recent climatology by approximately 3 °C (5.4 °F), which is consistent with a projected increase in temperature on a west-wide United States basis (NOAA 2009, p. 29). The low model projections are in most cases higher than the 90th percentile of recent climatology, which suggests that the coolest summers of the mid-21st century at the 22 pika sites will be warmer than the hottest summer of the recent past (NOAA 2009, p. 19). The NOAA states that the set of projections for surface temperatures in 2050 are statistically different from the historical climatology.

Based on NOAA's calculations (NOAA 2009, p. 20), we compared past versus projected climatology for each of the 22 pika sites chosen to represent habitats for the five subspecies (*Ochotona princeps princeps*, *O. p. saxatilis, O. p. fenisex*, *O. p. schisticeps*, and *O. p. uinta*) across the range of the species.

Chronic heat-stress (e.g., recent average summer (J-J-A) subsurface temperatures) was identified as the best predictor of pika extirpations (Beever *et al.* 2009, p. 18). Pika-extirpated sites from the Great Basin had warmer below-talus temperatures than pika-extant sites from time periods 1945-1975, 1976-2006, and 2005-2006 (Beever *et al.* 2009, Table 1), with the strongest predictive ability of heat stress metrics being based on recent climate during 2005-2006 (Beever *et al.* 2009, pp. 13, 18). For the most recent time period, below-talus (0.8 m (2.6 ft) subsurface) temperatures from extirpated sites had a mean temperature of 17 °C (62.6 °F) plus or minus one standard error of 0.8 °C (1.4 °F) when compared to a mean temperature of 12.4 °C (54.3 °F) plus or minus one standard error of 1.0 °C (1.8 °F) for extant sites. Therefore, we assumed that warmer below-talus temperatures increase the risk of extirpation to American pikas.

The following discussion analyzes the effects on pika populations of: (1) Historical mean summer surface temperatures; (2) projected mean summer surface temperatures; and (3) estimated subsurface temperatures. As stated previously, below-talus temperatures from extirpated sites had a mean temperature of 17 °C (62.6 °F) when compared to a mean temperature of 12.4 °C (54.3 °F) for extant sites (Beever *et al.* 2009, Table 1). However, we were unable to convert historical and projected average summer surface temperatures to below-talus temperatures at the 22 pika sites used in NOAA's analysis. Relationships between surface and subsurface temperatures at the 22 pika sites are not known. The relationship between surface and subsurface temperatures is not linear and is site-specific, making it impossible to generalize across the range of a subspecies or the species as a whole. Therefore, we used a mean surface temperature of 16.2 °C (61.2 °F), which is equal to 17 °C (62.6 °F) minus one standard error of 0.8 °C (1.4 °F), as a conservative indicator of increased risk to pika populations used in NOAA's report (2009). We determined that any pika site that was projected to experience a surface temperature (realizing that below-talus temperatures can be substantially cooler than surface temperatures in the summer) of greater than or equal to 16.2 °C (61.2 °F) would be at increased risk of extirpation as a result of stress from climate change. The sites that exceed our measure of risk are represented by the bold numbers in Table 1 above. This temperature should not be considered deterministic, but only a starting point, based on current best available science, for identifying a temperature range that represents increased risk to pikas.

Table 1 above uses our conservative measure of potential risk and shows that historical climatology (J-J-A mean for 1950 to 1999) at the mean elevation for NOAA's climate projections, and at higher elevations (J-J-A mean for 1950 to 1999 at maximum elevations) known to harbor pikas, suggests that all sites (22 of 22) across the range of species were not at risk from average summer surface temperatures of greater than or equal to 16.2 °C (61.2 °F) from 1950 to 1999. However, historical climatology at minimum elevations (J-J-A mean 1950 to 1999 at minimum elevations) demonstrate that lower elevation pika sites (4 of 18) were at higher risk of experiencing adverse effects as a result of increased average summer temperatures from 1950 to 1999. Pika sites at relatively low elevations from the Sangre de Cristo Mountains, mountains of southeastern Oregon, southern Wasatch Mountains, and Warner Mountains were at risk from high average summer temperatures (Table 1 above). In fact, extirpations occurred at low elevations in areas adjacent to the Warner Mountains, in the mountains of southeastern Oregon, and southern Wasatch Mountains (Beever *et al.* 2003, p. 43; Oliver 2007, p. 5; Wilkening 2007, p. 58). We are not aware of any extirpations from the Sangre de Cristo Mountains; however, we have no historical information to compare back to recent survey data. Corroboration of findings between NOAA's report and other recent reports of extirpations or higher risk areas in the Great Basin suggests mean summer temperature is a useful variable for predicting the relative risk of increased temperatures to pika populations.

We do not anticipate the species to be adversely affected on a range-wide basis by increased summer temperatures. In our climate change risk assessment, we determine that no pika site would be at risk across its entire range of elevation, but some mid- to low-elevation areas that contain pikas would be at risk from increased summer surface temperature (Table 1 above). This determination, paired with the fact there is a significant

amount of habitat not at risk from climate change, prevents the species from being threatened or endangered from climate change. The relatively low elevations within pika sites that would be at risk were distributed among four of five subspecies, with *Ochotona princeps uinta* not containing any populations that would be at risk. These relatively low-elevation, at-risk areas do not represent a substantial amount of pika habitat, especially since pikas primarily occupy high-elevation talus habitat. Therefore, we conclude the entire species would not be at risk from increased summer surface temperatures now or in the foreseeable future. Our next analysis focuses on a climate change risk assessment at the subspecies level as discussed below.

We determine that portions of the Sierra Nevada subspecies, *Ochotona princeps schisticeps*, may be at risk of extirpation due to potential impacts from recent and future climate change. In general, the populations of *O. p schisticeps* that would be at highest risk of extirpation represent the lower elevation sites in the Great Basin with correspondingly higher mean temperatures. Populations at mid- to high elevations at most sites, which are projected to be cooler than 16.2 °C (61.2 °F), should not be at risk of extirpation as a result of exposure to increased summer temperatures. We expect at least portions (primarily lower elevations) of five of seven sites for *O. p. schisticeps* (Table 1 above) to be at risk from increased summer temperatures by the year 2050.

Pika populations in the Bodie Mountains and the Sierra Nevada Range are not at risk of extirpation. Populations in the Sierra Nevada Range are not at risk due to the preponderance of high-elevation habitats (2,943 to 3,402 m (9,657 to 11,160 ft)) and correspondingly cooler environments. This conclusion is consistent with available literature (Beever *et al.* 2003, pp. 43, 45; Smith 2009, p. 5), which suggests that lower elevation sites, particularly along the southern edge of the species' range, are at a higher risk of being extirpated from increased temperatures.

We also determine that portions of the Northern Rocky Mountain subspecies, *Ochotona princeps princeps*, may be at risk of extirpation due to potential impacts from future climate change. We anticipate higher risks of extirpation for low to medium elevation (below approximately 3,048 m (10,000 ft)) of *O. p. princeps* populations in the Northern Wasatch Mountains of Utah, Ruby Mountains of Nevada, lower elevations of Glacier National Park, and Sawtooth Range in Idaho. These higher risks are due to projected mean surface temperatures above our 16.2 °C (61.2 °F) measure of elevated risk (Table 1 above).

We do not anticipate an increase in mean summer temperature by 2050 will have an adverse affect on the majority of *O. p. princeps* populations found in Wyoming, Idaho, and Montana; specifically in the Bighorn Mountains, Clearwater Mountains, Gallatin National Forest, mid- to high elevations of Glacier National Park, Wind River Range, and Bridger-Teton National Forest. Average summer surface temperature for these areas is projected to be below 16.2 °C (61.2 °F). The NOAA was unable to generate surface temperature projections for 2050 at minimum and maximum elevations of occupied pika sites in the Bighorn Mountains, Clearwater Mountains, Gallatin National Forest, Wind River Range, and Bridger-Teton National Forest. Specific locations (latitude and longitude coordinates) for pika populations, which are necessary in order to generate temperature projections at elevation, were not available for these five areas. While temperature projections are not available for these five areas, it is possible that at least some lower elevation pika sites will be at increased risk of extirpation as a result of exposure to summer temperatures at or above 16.2 °C (61.2 °F). Mid- to high-elevation sites, where pikas are usually more common in the Northern Rocky Mountain Range, should be at a lower risk of extirpation or experience no risk, because summer temperatures will be cooler. Therefore, we anticipate the majority of *O. p. princeps* populations will not be at risk from increased summer temperature.

We also determine that portions of the Coast Mountain and Cascade Range subspecies, *Ochotona princeps fenisex*, may be adversely affected by climate change. We anticipate risks to pika populations occurring at lower elevations (approximately 914 m (3,000 ft or less)) at Mt. St. Helens. Pika populations occurring above approximately 914 m (3,000 ft) at Mt. St. Helens would likely experience a reduced risk of extirpation from increased summer temperature. Projections for 2050 summer surface temperature are below our measure of increased risk (16.2 °C (61.2 °F)) at Crater Lake, near Mt. Baker in the North Cascades Mountain Range, and the Mt. Hood/Three Sisters Mountains; therefore, we do not anticipate any risks to pika populations in these areas (Table 1 above). Of the 69 unique pika observations used to generate an elevation range of *O. p. fenisex*, we do not anticipate risks (temperature approximately greater than or equal to 16.2 °C (61.2 °F)) from increased summer temperatures occurring at 98 percent (68 of 69) of the observation points. Therefore, we determined that the majority of *O. p. fenisex* populations would not be at a high risk of extirpation from increased summer temperatures by 2050. Because a sufficient amount of the habitat for *O. p. fenisex* is not at risk, we determined that future climate change does not threaten or endanger the subspecies.

We do not anticipate populations of *Ochotona princeps uinta* to be at risk from the effects of increased summer temperatures; all projected surface temperatures remain below our measure of elevated risk (16.2°C (61.2°F)) (Table 1 above). Therefore, we do not anticipate adverse population-level effects from increased summer temperatures to occur in populations of this subspecies.

We do not anticipate an increase in mean summer temperature by 2050 to have an adverse effect on the majority of *Ochotona princeps saxatilis* populations, because the majority (76% in Colorado) of pika populations in the Southern Rocky Mountains occur at higher elevations where temperatures will remain below our 16.2 °C (61.2 °F) measure of elevated risk (Table 1 above; CDOW 2009, p. 21). Lower elevation populations of *O. p. saxatilis* in the Sangre de Cristo Mountains of northern New Mexico and Southern Rocky Mountains in Colorado are at higher risk of extirpation than populations occurring at mid- to high elevations in the Sangre de Cristo Mountains and Southern Rocky Mountains, again due to higher mean summer temperatures (Table 1 above). The majority of the pika populations in the Sangre de Cristo Mountains of New Mexico and Southern Rocky Mountains of Colorado occur at elevations near or greater than 3,353 m (11,000 ft) (CDOW 2009, p. 16; USFS 2009, pp. 2-6). We expect lower risks of extirpation at these sites as a result of populations being exposed to relatively lower average summer temperatures (below 16.2 °C (61.2 °F)).

As previously discussed, the subsurface temperatures of occupied habitats are a better predictor of the temperatures experienced by individual pikas and of the persistence of populations (Beever *et al.* 2009, pp. 9-10; Millar and Westfall 2009, p. 21). In addition to presenting comparisons of average summer surface temperatures, we reviewed below-surface (0.8 m (2.6 ft) below talus surface) temperatures as a variable to compare extant to

extirpated sites (Beever *et al.* 2009, Table 1).

Summer microclimate in below-talus interstices is significantly cooler, as much as 24 °C (43.2 °F) during the hottest times of day (Finn 2009a, pers. comm.), at pika-extant sites compared to pika-extirpated sites (Beever *et al.* 2009, Table 1). Millar and Westfall (2009, p. 20) discovered that within-rock matrix (interstitial spaces between boulders) temperatures at Sierra Nevada pika sites are as much as 4 to 7 °C (7.2 to 12.6 °F) lower than adjacent bedrock or mineral soil. Below-talus (0.8 m (2.6 ft)) temperatures from five Great Basin pika sites were on average 6 °C (10.8 °F) cooler than those recorded from the surface during the hottest time of the day (Finn 2009a, pers. comm.), which is the time of day when pikas retreat to subsurface areas to escape thermally stressful conditions (at least at lower elevations sites).

Based on these data, it is evident that conditions below the talus-surface are site-specific and likely are specific to several other factors at a finer scale. These data suggest that pikas can persist in relatively warm surface environments if temperatures below the talus-surface contain favorable thermal conditions for survival (Millar and Westfall 2009, p. 21).

Comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be overly conservative because risk estimates for pika sites were based on projections for summer surface temperatures. Because below-talus microclimate provides pikas with cool habitat during the hottest time of day during the summer, and pikas are dependent on these subsurface environments for survival, heat-stress levels experienced by pikas may be less than expected. The actual risk levels for pika populations at these sites are likely to be lower than we estimate above.

In summary, we anticipate that the majority of *Ochotona princeps princeps, O. p. fenisex*, *O. p. schisticeps,* and *O. p. saxatilis* populations are not now or will not be at risk of extirpation due to increased summer temperatures resulting from climate change in the foreseeable future. Our analysis also shows that no portions of the *O. p. uinta* populations are at risk of extirpation now or in the foreseeable future due to climate change. Increased summer temperatures have the potential to adversely impact some lower and mid-elevation pika populations of *O. p. princeps, O. p. fenisex*, *O. p. schisticeps,* and *O. p. saxatilis* in the foreseeable future; however, this does not equate to a significant portion of the suitable habitat for any of these subspecies or the species collectively. American pika can tolerate a wider range of temperatures and precipitation than previously thought (Millar and Westfall 2009, p. 17). The American pika has demonstrated flexibility in its behavior and physiology that can allow it to adapt to increasing temperature (Smith 2009, p. 4). Based on all these lines of evidence, we determine that climate change is not a threat at the species-level or the subspecies-level now or in the foreseeable future.

Livestock Grazing

In general, pikas forage within 50 m (164 ft) of talus. The potential for interactions between pika and livestock in the immediate vicinity of talus (i.e., within 50 m (164 ft)) depends on the site-specific conditions. In some areas, steep terrain or rock formations may largely prevent livestock from accessing talus margins (Beever *et al.* 2003, p. 50); in other areas, if livestock have access to the talus edge, effects to pikas from livestock presence may not be through competition for food, but rather an indirect influence of trampling of soils or vegetation affecting vegetative growth (Beever *et al.* 2003, p. 49). Livestock grazing also could reduce vegetation close to talus habitat and subsequently cause pikas to forage farther from the protective cover of talus, thus increasing energy demands and risk of predation (Beever *et al.* 2003, p. 49). However, Beever *et al.* (2003, p. 50) noted the presence of an active haypile directly under a well-traveled horse trail and several haypiles near other trails in Nevada, suggesting that livestock may not affect foraging activities. Livestock generally avoid crossing rocky talus slopes, preventing direct interactions between livestock and pikas (Beever *et al.* 2003, p. 50). If interactions are happening between pika and livestock that result in a negative impact, we believe that these impacts occur primarily on a local scale within few pika habitats and are not a threat to overall pika populations.

There are few studies regarding the effects of grazing on pika populations. Within the range of *Ochotona princeps schisticeps*, extirpations at 6 of 25 sites in the Great Basin occurred primarily in livestock-grazed areas (Beever *et al.* 2003, p. 43). A modeling revealed that grazing was one of the top three predictors of the probability of pika extirpation (Beever *et al.* 2003, pp. 45, 46, 49). However, the authors stated their methods were not sufficient to determine whether a cause-and-effect relationship existed (Beever *et al.* 2003, p. 47), and they subsequently withdrew their conclusion due to errors in the analysis (Beever 2009c, pers. comm.). Reanalysis showed that grazing occurrence at pika sites in the Great Basin was no longer in the top models to predict the probability of population extirpation (Beever 2009c, pers. comm.), showing there is not a significant correlation between pika extirpations that have occurred in the Great Basin and livestock grazing.

Additionally, it also is possible that livestock do not affect the generalist diet of pikas. In North America, pika diet changes in the face of changing nutrition values in available plant species by shifting to an increase in sedges and forbs, especially in late summer when grasses become less nutritious. In general, cattle and horses, as ruminants, prefer grasses (graminoids) over forbs or shrubs (Shipley 1999, pp. 20-21) and can be considered specialist foragers relative to American pikas, which are generalist foragers. Furthermore, Wilkening (2007, p. 39) found that the relative amount of forb cover, not graminoids, was the single greatest predictor of persistence for *Ochotona princeps schisticeps* in the Great Basin. We conclude that the potential competition for forage between pikas and livestock is low.

In summary, the potential for interactions between pika and livestock in the immediate vicinity of talus where pikas forage depends on the site-specific conditions. In some areas, steep, rocky terrain may largely prevent livestock from accessing talus margins (Beever *et al.* 2003, p. 50). If livestock have access to the talus edge, effects to pikas may be indirectly influenced by trampling of soils or vegetation (Beever *et al.* 2003, p. 49). However, livestock generally avoid crossing rocky talus slopes, preventing direct interactions between livestock and pikas (Beever *et al.* 2003, p. 50). Thus, livestock may not affect foraging activities (Beever *et al.* 2003, p. 50). Pikas are generalist foragers while livestock specialize in foraging on graminoids (grasses), reducing the potential competition for forage. If interactions are happening between pika and livestock that result in negative impacts, we believe that these impacts occur primarily on a local scale within few pika habitats and are not a threat to overall pika populations. We conclude that livestock grazing is not a significant threat to any of the five subspecies of the American pika and, therefore, is not a threat to the species now or in the foreseeable future.

Native Plant Succession

Changes in vegetation, such as conifer encroachment into subalpine or alpine meadows, could potentially affect available forage for the American pika. Altitudinal treeline in the western North America has rarely moved more than 100 m (330 ft) vertically during the Holocene period, even during prolonged warm periods (Rochefort *et al.* 1994 cited in Farge 2003, p. 267). Although there is no clear evidence of uniform upward altitudinal treeline movement, tree establishment in subalpine meadows has been documented across the range of the American pika in areas like Glacier National Park in Montana (Bekker *et al.* 2000 cited in Farge 2003, p. 267), Mount Rainer National Park (Franklin *et al.* 1971, p. 215) and the Olympic Mountains (Woodward *et al.* 1995, p. 217) in Washington, the central Sierra Nevada mountain range in California (Millar *et al.* 2004, p. 181), the White Mountains of south-central New Mexico (Dyer and Moffett 1999, p. 444) and the Uinta Mountains in Utah (Dyer and Moffett 1999, p. 452).

Tree establishment in subalpine meadows may affect pikas for a number of reasons. Trees near pika territories could obstruct a pika's ability to visually detect predators, and trees could provide perches for avian predators (Wilkening 2007, pp. 42-43). Tree presence in meadows also alters vegetation composition that could potentially affect pika foraging behavior or forage availability. Relative tree cover is negatively correlated with *Ochotona princeps schisticeps* occupancy in the Great Basin (Wilkening 2007, p. 42). However, *O. p. schisticeps* sites in Lava Beds National Monument in northern California that have a low ratio of grass (graminoids) to forbs, shrubs, and trees are more likely to be used by pikas (Ray and Beever 2007, p. 45). *O. p. schisticeps* sites recently discovered on the Klamath National Forest in northern California found pikas occurring in talus sites surrounded by mixed conifer forests at approximately 1,800 m (6,000 ft) in elevation and haypiles at those sites that included conifer branches (Hoyer and Fleissner 2009, pers. comm.). Studies also have documented pika foraging on tree saplings, which may prevent the establishment of trees near talus areas occupied by pikas (Krear 1965 and Simpson 2001 cited in Wilkening 2007, p. 42).

Studies on *Ochotona princeps schisticeps* in the Great Basin have demonstrated that vegetation factors, specifically relative forb cover, influence pika persistence (Wilkening 2007, p. 39) and are a strong predictor of occupancy (Ray and Beever 2007, p. 1). Relative forb cover is negatively correlated with mean summer temperature and average daily summer highs (Wilkening 2007, p. 39). Wilkening's (2007, p. 40) analysis is based on only two years of temperature data collected at extant and extirpated sites and may not represent conditions pikas experienced when extirpations occurred. It also is too short of a time period to document temperature variability, and it may not be representative of what pikas may experience in the future.

Meadow invasions during the 20th century are correlated with climate change and other abiotic factors (Dyer and Moffett 1999, pp. 444, 452; Millar *et al.* 2004, p. 181). Precipitation (snow depth or snow pack) (Rochefort and Peterson 1996, p. 52; Farge *et al.* 2003, p. 263) and snow-free periods in subalpine meadows (Franklin *et al.* 1971, p. 215) are critical variables regulating conifer expansion. Tree encroachment also is influenced locally by vegetation type, topographic variation, landscape position (Rochefort and Peterson 1996, p. 58), aspect (Dyer and Moffett 1999, p. 453), and warmer minimum temperatures (Millar *et al.* 2004, p. 193) making uniform predictions difficult across the range of the American pika. However, in general, tree and shrub distributions in North America are likely to shift northward and upward in elevation in response to future climate change and species ranges (Shafer *et al.* 2001, p. 213).

One example of a study investigating vegetative response to climate change occurs within the range of *Ochotona princeps saxatilis* in Colorado. This study shows increased warming expected under an atmosphere with a concentration of carbon dioxide twice that of pre-industrial levels could change the dominant vegetation of meadow habitat from forbs to shrubs like *Artemisia tridentata* (sagebrush) and *Pentaphylloides floribunda* (shrubby cinquefoil) (Harte and Shaw 1995, p. 876). However, Dearing (1996, p. 474) found both of these plant species in abundance in pika haypiles in Colorado. While climate change has historically and may continue to affect sagebrush and shrubby cinquefoil distribution in Colorado in the future, it appears that pikas are adapting locally to these vegetative changes and utilizing these plant species in their haypiles.

Although we have data to support that climate change has the potential to influence vegetative species distribution in the future, the resolution at which the simulations are made is very coarse (25 km (15.5 mi) grids in Shafer *et al.* 2001 (p. 202)). Very coarse data are difficult to apply to the American pika. All species have inherent spatial bounds on their life histories which can very extremely among species. Considering all vertebrates, American pikas are close to the smaller end of this spectrum. A typical pika can live its entire life within a 0.8 km (0.5 mi) diameter circle, which, ecologically, is bounded by the extent of a talus patch and a narrow buffer surrounding it. Conversely, climate models are often initially constructed at much coarser resolution – as much as 60 x 60 km (37.3 x 37.3 mi) resolution. For each climatic parameter (average temperature, average precipitation) there is only one value for each pixel (i.e., 60 x 60 km (37.3 x 37.3 mi) cell) despite the known ecological variation present in this pixel. Several techniques are available to 'downscale' climate models and downscaled maps are available (e.g., Shafer *et al.* 2001). However, factors such as topography, landform, geology, and soil properties can modify climate properties at finer resolutions. Whereas modelers have high confidence in coarse resolution climate models downscaled climate model interpretations becomes less reliable especially when applied to an ecological response (i.e., pika behavior) acting at fine resolution. Using plant species distribution models from Shafer *et al.* (2001) as an example, there may be fine-resolution factors (e.g., soil properties) affecting plant species distributions that were not accounted for. That may be acceptable when tracking common species range shifts but not necessarily useful to evaluate threats to a population inhabiting a small fraction of a pixel, such as in the case of the American pika.

Additionally, projections of vegetative changes from Shafer *et al.* (2001) are for a 10–year period around 2090, a time period in which we think drawing any conclusions would be too speculative. Pikas have a generalist diet and manipulate vegetative species composition and growth rates in areas where they forage. As a result of these life history characteristics, we anticipate pikas will likely be able to adapt the level of changes happening to vegetative communities as a result of climate change. We have no clear trends to indicate that native plant succession as a result of climate change represents a significant threat to the American pika's ability to forage.

In summary, the relationship between pikas and their associated vegetative communities are complex, multifaceted and not well understood (Wilkening 2007, p. 40). Potential changes in native vegetative plant communities, including

tree encroachment of meadows, in American pika habitat could affect foraging. Pikas do not forage far from talus areas, and they manipulate the vegetative species composition and growth rates where they forage, suppressing plant succession. There are no clear trends showing that native vegetative changes are occurring at the scale that would affect pika foraging habitat and there is no evidence to suggest that native plant succession is a threat to pikas. We do not believe that this represents a significant threat to any of the five subspecies of the American pika and is not a threat to the species as a whole now or in the foreseeable future.

Invasive Plant Species

Nonnative plant invasions vary according to climate, elevation, soils, and topography, as well as natural or human-mediated disturbance (Parks *et al.* 2005, p. 151). Several studies in North America indicate a negative correlation between elevation and nonnative species' richness or abundance. Invasive species richness may decline with increasing elevation because fewer species (native as well as nonnative) thrive in the shorter growing seasons, cooler temperatures, and generally more stressful environment of subalpine and alpine ecosystems than at lower elevations (Zouhar *et al.* 2008, p. 28). Parks *et al.* (2005, pp. 149, 154) synthesized much of the available information on the patterns of invasive plant diversity within the northwest mountain regions of the United States and found that alpine and subalpine plant communities (including wilderness areas and national parks) are still relatively unaffected by invasive plants. This condition is due in part to the remoteness of these areas and limited human access to these sites. However, Parks *et al.* (2005, p. 149) found that hay hauled into wilderness areas to support horses and mules for hunting and pack trips is a major source of noxious weeds, but the nonnative plant distribution along trails decreased sharply within a few meters (feet) of the trails, indicating that wilderness areas are not ideal habitats for nonnative plants.

Fire can result in nonnative plant invasions at high elevations. Fire increases resource availability for invading plants, exposes mineral soils, reduces native species dominance and vigor, and could accelerate invasions (Zouhar *et al.* 2008, p. 28). Within the forests of the western United States, the greatest increases in wildfire frequency have been in the northern Rocky Mountains followed by the Sierra Nevadas, and the southern Cascade Mountains and the Coast Ranges of northern California and southern Oregon (Westerling *et al.* 2006, p. 941). This increase in fire frequency has occurred between 1,680 and 2,590 m (5,512 and 8,497 ft) in elevation and with the greatest increase centered around 2,130 m (6,988 ft) (Westerling *et al.* 2006, p. 941). Reduced winter precipitation, early spring snow melt, warmer spring and summer temperatures, longer dry summers, and drier vegetation all played a role in the increased wildfire activity (Westerling *et al.* 2006, p. 943). Whether the changes observed in wildfire are the result of greenhouse gas-induced climate change or normal climatic variability, climate model projections indicate that warmer springs and summers will occur in the coming decades creating conditions favoring the occurrence of large wildfires in forested areas (Westerling *et al.* 2006, p. 943) which would potentially affecting the spread of invasive plant species.

However, the pioneering nonnative species most favored in recent burns are unlikely to persist in high-elevation environments (Zouhar *et al.* 2008, p. 28). This outcome has been confirmed in fire effects studies conducted in wilderness and national parks along the crest of the Cascade Mountains that have not found nonnative plants (Douglas and Ballard 1971, pp. 1061-1062; Miller and Miller 1976 and Hemstrom and Franklin 1982 cited in Parks *et al.* 2005, p. 145); whether this absence is due to lack of seed source or environmental barriers to establishment is unknown. Therefore, we conclude that fire occurrences at high elevations in alpine and subalpine areas are not likely to increase nonnative plant invasions and this factor does not represent a significant threat to pika foraging.

When we reviewed the State WAPs in the range of the American pika, we found that invasive plants are listed as threats in some pika habitat, but not in the species' primary alpine habitat. New Mexico's WAP acknowledged that wet meadow habitat can be manipulated to replace native vegetation with pasture species (NMDGF 2006, p. 183). California's WAP (Bunn *et al.* 2006, p. 272) listed invasive plants as a threat to the Modoc plateau (for example, *Bromus tectorum* (cheatgrass) and *Lepidium virginicum* (pepper weed)), but stated that subalpine and alpine plant communities in the Sierra Nevada and Cascades are relatively intact, with few invasive plants (Schwartz *et al.* 1996 cited in Bunn *et al.* 2006, p. 299). Similarly, Nevada's WAP (NDOW 2005, p. 159) did not list invasive plants as a threat to alpine and subalpine habitats. Utah's WAP (Sutter *et al.* 2005, pp. 5-7, 8-7) listed invasive plants (cheatgrass and noxious weeds) as a threat to the American pika's secondary habitat of mountain shrub. Alpine habitats that are the primary habitat for the American pika are not identified as a key habitat by the State of Utah and, therefore, threats to this habitat are not listed in the Utah WAP (Sutter *et al.* 2005, pp. 5-8).

The invasion of the American West by *Bromus tectorum* has caused widespread modifications in the vegetation of semi-arid ecosystems (Rowe and Brown 2008, p. 630) replacing native vegetation with a monoculture of nonnative annual grass. Additionally, invasions of *B. tectorum* and other nonnative grass species alter fuel loads, alter fuelbed flammability, and increase fire frequency and intensity (Zouhar *et al.* 2008, pp. 38-39), further promoting the spread of *B. tectorum*. Generally this invasion is occurring at or below 2,000 m (6,562 ft) in elevation; however, *B. tectorum* has been documented in Rocky Mountain National Park up to 2,750 m (9,022 ft) in elevation (Rowe *et al.* 2007, p. 45), suggesting that *B. tectorum* may be a future invader of higher elevations.

Bromus tectorum is a relatively nutritious food plant for herbivores in its earliest stages, but as the grass matures it presents mechanical difficulties for digestion and has low nutritional value for herbivores (Klemmedson and Smith 1964, p. 249). Additionally, the period that *B. tectorum* is palatable and nutritious for herbivore consumption is considerably shorter than for most native herbaceous plants (Klemmedson and Smith 1964, p. 250). Studies have documented *B. tectorum* in haypiles at *Ochotona princeps princeps* sites in central Idaho (Elliot 1980, p. 208). At sites in the Great Basin, *B. tectorum* was the fourth or fifth most abundant plant species in *Ochotona princeps schisticeps* haypiles (Beever *et al.* 2008, pp. 11, 14). Even though pikas are haying *B. tectorum*, studies have not documented pikas grazing on *B. tectorum* nor has the nutritional value and digestibility of *B. tectorum* for pikas been investigated (Wilkening 2007, p. 10; Beever *et al.* 2008, p. 12).

Bromus tectorum seeds can germinate even after the mature plant is uprooted or its stem is cut, or after seeds pass through an herbivore's digestive system. Thus, pikas may alter the dynamics of the spread of *B. tectorum* at local spatial scales (Beever *et al.* 2008, p. 12). The pika's consumption and digestibility of

seeds is unknown; thus, the potential for seed redistribution also is unknown. At this time, there is no data that indicate that *B. tectorum* presence in pika habitat represents a significant threat to the species or any of the five subspecies.

In summary, invasions of nonnative plants could change the composition of meadows used for foraging by the American pika. However, subalpine and alpine ecosystems are relatively intact and free from invasive species. *Bromus tectorum* (cheatgrass) has been documented in pika habitat below 2,750 m (9,022 ft) in elevation. *Ochotona princeps schisticeps* and *O. p. princeps* have been documented to use this species, but the nutritional value and digestibility of *B. tectorum* for pikas is poorly understood. At this time, we have no evidence indicating that invasive plant species pose a significant threat to any of the five subspecies of the American pika and, therefore invasive plant species are not a threat to the species now or in the foreseeable future.

Fire Suppression

Fire is considered an important factor in creating and maintaining meadow areas, and the microclimate of the fire-created openings determines whether or how fast trees reinvade (Franklin *et al.* 1971, p. 221). For example, many subalpine meadows in the Olympic Mountains in Washington were probably created by fire (Woodward *et al.* 1995, p. 218).

Human suppression of wildfires could allow for the establishment of trees in subalpine meadows. However, in general, human wildfire suppression efforts focus on protection of urban areas first and foremost. Pikas typically occur in remote areas far from urban settings where human access for suppression is sometimes difficult due to the remoteness of the area and steep terrain. Additionally, in most cases, pika occur in wilderness areas, national parks, and other federally protected areas with specific management goals and objectives that implement Minimum Impact Suppression Tactics (MIST). The MIST emphasize suppressing wildland fire with the least impact to the land and use the minimum amount of fire-fighting resources necessary to effectively achieve the fire management protection objectives consistent with land and resource management objectives (National Wildfire Coordinating Group 2003, p. 1). Implementation of MIST in areas where pikas occur on federally protected lands minimizes the potential for humans interfering with the process of wildfires limiting tree encroachment and creating or maintaining alpine meadows. Additionally, implementation of MIST reduces the possibility of humans acting as vectors for introduction of invasive plants. We conclude that there is no evidence that indicates that human fire suppression efforts represent a significant threat to pikas.

In summary, fire is considered an important factor in creating and maintaining meadow areas. Human suppression of wildfires could allow for the establishment of trees in subalpine meadows or possible invasions from nonnative plants in pika habitat. However, pikas typically occur in remote areas and in most cases, are occurring in federally protected areas with specific management goals and objectives that implement MIST. We conclude that there is no evidence to indicate that human fire suppression efforts are a significant threat to any of the five subspecies of the American pika; therefore, fire suppression is not a threat to the species now or in the foreseeable future.

Summary of Factor A

In our analysis of Factor A, we identified and evaluated the following risks to habitat of the five subspecies of the American pika and the species as a whole: (1) Climate change; (2) livestock grazing; (3) native plant succession; (4) invasive plant species; and (5) fire suppression.

Increased summer temperatures as a result of climate change may have the potential to adversely affect some lower and mid-elevation pika populations of *Ochotona princeps princeps, O. p. fenisex*, *O. p. schisticeps* and *O. p. saxatilis* in the foreseeable future; however, this does not equate to a significant portion of the suitable habitat for any of the five subspecies or the species collectively. American pika can tolerate a wider range of temperatures and precipitation than previously thought (Millar and Westfall 2009, p. 17). The American pika has demonstrated flexibility in its behavior, such as using cooler habitat below the surface to escape hotter summer daytime temperatures, and physiology that can allow it to adapt to increasing temperature (Smith 2009, p. 4). Cooler temperatures below the talus surface can provide favorable thermal conditions for pika survival in relatively warm surface environments. Based on all these lines of evidence, we have determined that climate change is not a threat at the species or the subspecies-level now or in the foreseeable future.

The potential for interactions between pika and livestock where pikas forage depends on the site-specific conditions. If interactions are happening between pika and livestock that result in negative impacts, we believe that these impacts occur primarily on a local scale within a few pika habitats and are not a threat to overall pika populations. We conclude that livestock grazing is not a significant threat to any of the five subspecies of the American pika and, therefore, it is not a threat to the species now or in the foreseeable future.

Potential changes in native vegetative plant communities, including tree encroachment of meadows, in American pika habitat could affect foraging. Pikas do not forage far from talus areas, and they manipulate the vegetative species composition and growth rates where they forage, suppressing plant succession. There are no clear trends showing that native vegetative changes are occurring at the scale that would affect pika foraging habitat and there is no evidence to suggest that native plant succession is a threat to pikas. We do not believe that native plant succession represents a significant threat to any of the five subspecies of the American pika and, therefore, it is not a threat to the species now or in the foreseeable future.

Invasions of nonnative plants could change the composition of meadows used for foraging by the American pika. However, studies document that subalpine and alpine ecosystems are relatively intact and free from invasive species. *Bromus tectorum* (cheatgrass) has been documented in pika habitat below 2,750 m (9,022 ft) in elevation. *Ochotona princeps schisticeps* and *O. p. princeps* have been documented to use this species, but the nutritional value and digestibility of *B. tectorum* for pikas is poorly understood. At this time, we have no evidence indicating that invasive plant species pose a significant threat to any of the five subspecies of the American pika, and, therefore, invasive plants are not a threat to the species now or in the foreseeable future.

Fire is considered an important factor in creating and maintaining meadow areas. Human suppression of wildfires could allow for the establishment of trees in subalpine meadows or possible invasions from nonnative plants in pika habitat. However, pikas typically occur in remote areas and in most cases, are occurring in federally protected areas with specific management goals and objectives that implement MIST. We conclude that there is no evidence to indicate that human fire suppression efforts are a significant threat to any of the five subspecies of the American pika and, therefore, these efforts are not a

threat to the species now or in the foreseeable future.

Based on our review of the best available information, we find that the present or threatened destruction, modification, or curtailment of the American pika's habitat or range is not a threat to the five subspecies or the species as a whole now or in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

During our review of the available information, we found no evidence of risks from overutilization for commercial, recreational, scientific, or educational purposes affecting any of the five subspecies of the American pika populations. Therefore, based on the best available scientific information, we conclude that the American pika is not threatened by overutilization for commercial, recreational, scientific, or educational purposes now or in the foreseeable future.

C. Disease or Predation

Disease

Pikas are known to be infected by coccidian parasites (Duszynski 1974, p. 94; Hobbs and Samuel 1974, p. 1079; Lynch *et al*, 2007 p. 1230); however, no information indicates these parasites affect the persistence of the species. Nematodes (*Murielus* spp.) (Hoberg 2005, pp. 358, 360-362) and pinworms (*Labiostomum* spp.) (Hoberg 2009 *et al*, pp. 490-491, 497) also are known to infect pikas. Galbreath (2009, pp. 98-100) describes seven helminth parasite species collected from pika (*Ochotona princeps*) that represent five distinct genera that including tapeworms (*Schizorchis*), oxyurid nematodes (*Cephaluris, Labiostomum*), and strongylid nematodes (*Graphidiella, Murielus*). Bot fly larvae (*Cuterebra* spp.) infestation and pulmonary fungus (*Haplosporangium parvum*) also have been reported in pikas, but these are likely extremely unusual cases (Carmichael 1951, pp. 606, 613, 616; Baird and Smith 1979, p. 553).

Pikas are hosts to Rocky Mountain wood ticks (*Dermacentor andersoni*) (James *et al*. 2006, pp. 21-22) and fleas (*Megabothris abantis, Meringis hubbardi*) (Bossard 2006, pp. 261, 264, 266). Fleas and ticks are potential vectors of disease and pathogens that may affect the health of pikas. However, during our review of the best available information, we only found one record of a disease-related mortality in pika. Plague was reported in an individual pika found in 1989 at Lava Beds National Monument in northern California (Bonkrude 2009, pers. comm.), in the subspecies *Ochotona princeps schisticeps*.

In summary, based on the best available scientific information, we conclude that disease does not pose a significant threat to the five subspecies of the American pika and, therefore, disease is not a significant threat to the species.

Predation

While pikas may be prey for numerous species, no information indicates that predation presents a threat to the species. Potential predators across the range of pikas include coyotes (*Canis latrans*), long-tailed weasels (*Mustela frenata*), short-tailed weasels (*M. erminea*), pine martens (*Martes americana*), raptors, and corvids (Broadbooks 1965, pp. 327, 329; Lutton 1975, p. 234; Marti and Braun 1975, p. 213; Ivins and Smith 1983, pp. 277-284; Smith and Weston 1990, p. 5; Forsman *et al*. 2004, p. 218; Quick 1951 and Murie 1961 *in* Gustafson 2007, p. 12). Pikas averaged less than one percent of northern spotted owl (*Strix occidentalis caurina*) prey found in pellets collected from 1970 to 2003 throughout Oregon (Forsman *et al*. 2004, p. 219) within the range of the subspecies *Ochotona princeps fenisex*. However, in Colorado within the ranges of *O. p. princeps and O. p. saxatilis*, pika was the most frequent mammalian prey collected near one nest and several roost sites of prairie falcons (*Falco mexicanus*) (Marti and Braun 1975, p. 213).

Ivins and Smith (1983, p. 277) investigated the response of *Ochotona princeps saxatilis* to martens and weasels in Rocky Mountain National Park in Colorado. Weasels have been identified as the most effective predator of pikas because of their ability to hunt within talus interstices (rocky slopes) (Ivins and Smith 1983, p. 279). Ivins and Smith (1983, p. 277) found that adult pikas use alarm calls to broadcast the presence of predators, warning kin and other pikas of the presence of a predator in the area. This may be one mechanism that has allowed pikas to persist in Rocky Mountain National Park in the presence of this effective predator. Another potential persistence factor is that pikas have a relatively high reproductive rate giving birth to average litter sizes of 2.34 to 3.68 young twice a year (Smith and Weston 1990, p. 4).

We have considered the best available information on predation and conclude that predation is not a significant threat to any of the five subspecies of American pika, and, therefore, predation is not a significant threat to the species as a whole.

Summary of Factor C

In conclusion, we found that while pikas are hosts to several species of internal parasites, as well as species of fleas and ticks, only one record exists of a disease-related morality of a single pika from plague in northern California. Additionally, we note that while pikas may be prey for numerous species, no information indicates that predation has an overall adverse effect on the species. We find that neither disease nor predation is a threat to any of the five subspecies of the American pika, and, therefore, neither disease nor predation is a threat to the species now or in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

To determine if existing regulatory mechanisms protect the five subspecies of the American pika, we evaluated existing international and United States conventions, agreements, and laws for the specific protection of the American pika or their habitats.

United States

Federal Laws and Regulations

The Wilderness Act

The USFS, NPS, Bureau of Land Management (BLM), and the Service all own lands designated as wilderness areas under the Wilderness Act of 1964 (16 U.S.C. 1131-1136). Within these areas, the Wilderness Act states the following: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical transport; and (5) no structure or installation may be built. As shown in Table 2 below, a large amount of suitable pika habitat occurs within Federal wilderness areas in the United States (Wilderness.net 2009). As such, a large proportion of existing pika habitat is protected from direct loss or degradation by the Wilderness Act's prohibitions. Where human activity and threats are increasing in wilderness areas that contain pika habitat, we have no evidence to suggest that pikas are being affected or will be affected in the foreseeable future (see Factor E).

TABLE 2. AMOUNT (PERCENT) OF AMERICAN PIKA HABITAT ACROSS LAND OWNERSHIP BY SUBSPECIES AND SPECIES (FINN 2009B, PERS. COMM.). MEASUREMENTS ARE GIVEN IN ACRES, [HECTARES], AND (PERCENT OF TOTAL) WITHIN RANGE

	O. p. schisticeps	*O. p. uinta*	*O. p. fenisex*	*O. p. princeps*	*O. p. saxatilis*	Species-wide
BLM*	96,002 [38,852] (15.08%)	106,803 [43,222] (25.98%)	16 [6] (0.01%)	29,457 [11,921] (1.70%)	54,644 [22,114] (6.00%)	286,922 [116,116] (7.18%)
DOD*	3,903 [1,580] (0.61%)	2 [1] (<0.01%)	9 [4] (<0.01%)	23 [9] (<0.01%)	0	3,937 [1,593] (0.10%)
NPS*	134,150 [54,290] (21.07%)	26,664 [10,791] (6.49%)	82,531 [33,400] (27.50%)	88,028 [35,624] (5.07%)	58,175 [23,543] (6.39%)	389,547 [157,648] (9.75%)
USFS*	370,580 [149,972] (58.20%)	237,520 [96,123] (57.77%)	213,163 [86,266] (71.03%)	1,515,056 [613,135] (87.26%)	711,626 [287,991] (78.18%)	3,047,945 [1,233,486] (76.31%)
Service*	2,253 [912] (0.35%)	0	0	63 [26] (<0.01%)	66 [27] (0.01%)	2,382 [964] (0.06%)
Misc. Fed.*	0	0	0	151 [61] (0.01%)	0	151 [61] (<0.01%)
Tribal Lands	3,883 [1,571] (0.61%)	4,885 [1,977] (1.19%)	549 [222] (0.18%)	44,392 [17,965] (2.56%)	108 [44] (0.01%)	53,817 [21,780] (1.35%)
Private	8,405 [3,401] (1.32%)	22,581 [9,138] (5.49%)	3,058 [1,238] (1.02%)	52,016 [21,050] (3.00%)	81,849 [33,124] (8.99%)	167,909 [67,952] (4.20%)
County	16,971 [6,868] (2.67%)	0	0	3 [1] (>0.01%)	0	16,974 [6,869] (0.42%)
State	607 [246] (0.10%)	12,678 [5,130] (3.08%)	777 [314] (0.26%)	6,996 [2,831] (0.40%)	3,723 [1,506] (0.41%)	24,780 [10,028] (0.62%)
Total	636,755 [257,686]	411,133 [166,380]	300,104 [121,448]	1,736,186 [702,610]	910,189 [368,340]	3,994,367 [1,616,498]
Total Wilderness Within Above Federal Land	295,962 [119,774] (46.48%)	19,558 [7,915] (4.76%)	192,754 [78,006] (64.23%)	514,726 [208,307] (29.65%)	178,118 [72,083] (19.57%)	1,201,118 [486,086] (30.07%)

*Federal land

National Environmental Policy Act

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500-1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects which cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR 1502). The NEPA itself is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for pika as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by the statute. Table 2 above shows the amount of pika habitat occurring on Federal lands; additionally, activities on non-Federal lands are subject to NEPA if there is a federal nexus.

Federal Land Policy and Management Act

The BLM's Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended, states that the public lands shall be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values, and that where appropriate, BLM will preserve and protect certain public lands in their natural condition, and provide food and habitat for wildlife (BLM and SOL 2001, p. 8). Pikas and pika habitat occur on BLM lands in Oregon, California, Nevada, Idaho, Wyoming, Colorado, and Utah. Table 2 above shows the amount of pika habitat occurring on BLM lands. We are unaware of any BLM-specific regulations, policies, or guidance that directly manages threats to pikas.

National Forest Management Act

Under the USFS' National Forest Management Act of 1976, as amended (16 U.S.C. 1600-1614), the USFS shall strive to provide for a diversity of plant and animal communities when managing national forest lands. Individual national forests may identify species of concern which are significant to each forest's biodiversity. It is unknown what level of protection, if any, each of the individual national forests offer for pika. In many of the 10 States in which pikas are found, pikas occur in wilderness areas and are thus protected under the Wilderness Act. Outside of wilderness but still on USFS lands, pikas occur mainly in alpine areas, which are sensitive to negative habitat alterations. Their habitat is generally offered more protections from harvest or road building than would otherwise be the case in lowland areas. Table 2 above shows the amount of pika habitat occurring on USFS lands.

National Park Service Organic Act

The NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS "shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations ... to conserve the scenery and the national and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Where pikas occur in National Parks, they and their habitats are protected from large-scale loss or degradation due to the Park Service's mandate to "...conserve scenery... and wildlife...[by leaving] them unimpaired." Table 2 above shows the amount of pika habitat occurring on NPS lands.

National Wildlife Refuge System Improvement Act of 1997

The National Wildlife Refuge Systems Improvement Act (NWRSIA) of 1997 (Pub. L. 105-57) amends the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd *et seq.*). The NWRSIA directs the Service to manage the Refuge System land and waters for conservation. The NWRSIA also requires monitoring of the status and trends of refuge fish, wildlife, and plants. The NWRSIA requires development of a comprehensive conservation plan for each refuge and management of each refuge consistent with the plan. Where pikas occur on National Wildlife Refuge lands (see Table 2 above), they and their habitats are protected from large-scale loss or degradation due to the Service's mission to "to administer a national network of lands... for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats."

Sikes Act

The Sikes Act of 1960 (16 U.S.C. 670a *et seq.*) authorizes the Secretary of Defense to develop cooperative plans for conservation and rehabilitation programs on military reservations and to establish outdoor recreation facilities, and it provides for the Secretaries of Agriculture and the Interior to develop cooperative plans for conservation and rehabilitation programs on public lands under their jurisdiction. The Sikes Act Improvement Act of 1997 required Department of Defense (DOD) installations to prepare integrated natural resources management plans (INRMPs). Consistent with the use of military installations to ensure the readiness of the Armed Forces, INRMPs provide for the conservation and rehabilitation of natural resources on military lands and incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. Table 2 above shows the amount of pika habitat occurring on DOD lands.

Clean Air Act of 1970

The petitioner claims that the American pika is threatened by a lack of regulatory mechanisms to curb greenhouse gases that contribute to global temperature rises (Wolf *et al.* 2007, p. 50). However, as stated earlier under Factor A, our status review did not reveal information that increased summer temperatures are a significant threat to the five subspecies or species range-wide now or in the foreseeable future. Nonetheless, we acknowledge that no regulatory mechanisms adequately address global climate change.

The Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*), as amended, requires the Environmental Protection Agency (EPA) to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health. In 2007, the Supreme Court ruled that gases that cause global warming are pollutants under the Clean Air Act, and that the EPA has the authority to regulate carbon dioxide and other heat-trapping gases (Massachusetts *et al.* v. *EPA* 2007 [Case No. 05-1120]). The EPA published a regulation to require reporting of greenhouse gas emissions from fossil fuel suppliers and industrial gas suppliers, direct greenhouse gas emitters and manufacturers of heavy-duty and off-road vehicles and engines (74 FR 56260; October 30, 2009). The rule, effective December 29, 2009, does not require control of greenhouse gases; rather it requires only that sources above certain threshold levels monitor and report emissions (74 FR 56260; October 30, 2009). On December 7, 2009, the EPA found under section 202(a) of the Clean Air Act that the current and projected concentrations of six greenhouse gases in the atmosphere threaten public health and welfare. The finding itself does not impose requirements on any industry or other entities but is a prerequisite for any future regulations developed by the EPA. At this time, it is not known what regulatory mechanisms will be developed in the future as an outgrowth of the finding or how effective they would be in addressing climate change.

Secretarial Order Number 3289

Department of the Interior Secretarial Order Number 3289, issued September 14, 2009 (Department of the Interior (DOI) 2009), provides guidance to bureaus and offices within DOI to work "...with other federal, state, tribal and local governments, and private landowner partners to develop landscape-level strategies for understanding and responding to climate change impacts." The DOI bureaus and offices also shall "...[c]onsider and analyze potential climate change impacts when undertaking long-range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making major decisions regarding potential use of resources under the Department's purview." The DOI land management plans and NEPA documents are subject to this Order. This Secretarial Order requires that Federal agencies consider the future potential impacts of climate change in their planning process. However, as stated earlier under Factor A, our status review did not reveal information that increased summer temperatures are a significant threat to the species range-wide now or in the foreseeable future.

State Comprehensive Wildlife Conservation Strategies (CWCS) and State Environmental Policy and Protection Acts

The pika receives some protection under State laws in Washington, Oregon, California, Idaho, Nevada, Utah, Montana, Wyoming, Colorado, and New Mexico. Each State's fish and wildlife agency has some version of a CWCS in

place. These strategies, while not state or national legislation, can help prioritize conservation actions within each State. Named species and habitats within each CWCS may receive focused attention during State Environmental Protection Act (SEPA) reviews as a result of being included in a State's CWCS. However, only Washington, California, and Montana appear to have SEPA-type regulations in place. In addition, each State's fish and wildlife agency often specifically names or implies protection of pikas in their hunting and trapping regulations. See below for an overview of pertinent regulations for each state in the range of the American pika.

Washington

The Washington Department of Fish and Wildlife's (WDFW) hunting regulations name the pika as "protected wildlife," meaning it is illegal to hunt, kill, possess, or control pikas in Washington (WDFW 2009, p. 65). This designation offers adequate protection to individual pikas from direct harm but offers no protection to pika habitat.

The WDFW does not include the pika in its CWCS. However, protection of talus (considered a rare habitat type) is identified as a conservation action under the CWCS (WDFW 2005, p. 293). Conservation actions are those actions necessary to improve the conservation status of the species or habitat in the next 10 years. Implementation of these actions will likely require the cooperation of partners (private, State, Federal, and so forth) and landowners.

Oregon

The Oregon Department of Fish and Wildlife (ODFW) does not include the pika in its CWCS. However, their hunting regulations name the pika as a "protected mammal," making it illegal to be taken without a permit (ODFW 2009, p. 82). This designation protects individual pikas from direct harm, but does not offer protection to pika habitat.

California

The California Fish and Game Code, Section 2000, states that it is illegal "...to take any bird, mammal, fish, reptile, or amphibian except as provided in the code or regulations made pursuant thereto." Pikas are considered a nongame mammal in California (California Fish and Game Code, Section 4150), and as such are protected from taking or possessing. This designation protects pikas from direct harm, but does not offer protection to pika habitat.

A major component of the California WAP (Bunn *et al.* 2007) is the identification of species of greatest conservation need in the State. The California Department of Fish and Game (CDFG) uses the Special Animal List, which includes Species of Special Concern (SSC), as the primary source list of these species. Revisions to the WAP will include threat assessments for current SSCs and their habitats, and will change conservation actions and priorities accordingly (Bunn *et al.* 2007, p. 19). The pika is listed as an SSC under California's WAP (CDFG 2009, p. 46).

Being designated as an SSC is an administrative label only and carries no formal legal status. The California Environmental Quality Act (CEQA) (California Public Resources Code secs. 21000-21177) requires State agencies, local governments, and special districts to evaluate and disclose impacts to SSCs from projects in the State. Section 15380 of the CEQA Guidelines clearly indicates that SSCs should be included in an analysis of project impacts if they can be shown to meet the criteria of sensitivity outlined therein. Sections 15063 and 15065 of the CEQA Guidelines guide managers in assigning "impact significance" to populations of non-listed species. Analysts are to consider factors such as population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features. Because SSC designation carries no legal status, it does not require mitigation where impacts are found to occur and as such would not protect pika habitat with certainty.

Idaho

Under the Idaho CWCS, pikas are considered to be secure, common, and widespread based on NatureServe's conservation status (IDFG 2005, App. A, p. 18), and are not a species of greatest conservation need in that State. Pikas are designated as "protected nongame wildlife" under Idaho's upland game hunting regulations. They may not be hunted, taken, or possessed (IDFG 2008, p. 9). This designation protects pikas from direct harm, but does not offer protection to pika habitat.

Nevada

Nevada Administrative Code (503.030) designates the pika as a protected mammal. As such it is illegal to hunt them in Nevada. This designation protects individual pikas from direct harm, but does not offer protection to pika habitat.

Pikas are designated as a vulnerable species as well as a species of conservation priority in Nevada's WAP, with a declining population (WAP Team 2006, pp. 405, 291). Nevada's conservation approach is to determine population viability, analyze demographics, confirm trends, identify suitable unoccupied habitat, and evaluate the potential for reintroduction. Talus slopes are identified as key elements of alpine and tundra habitat of importance to pika (WAP Team 2006, p. 154). Nevada's WAP Team has identified priority research needs focused on pikas, including determining: the effects of recreation; minimum viable population size; population demographics; factors contributing to pika extirpation in Nevada; and long-term responses of alpine and tundra communities to global climate change. They also intend to model viability of individual populations and refine population trend estimates and factors.

Utah

Under Utah's CWCS, pikas are a Tier III species (Sutter *et al.* 2005, pp. 5-7). The primary action for Tier III species is to gather more information regarding their status and any threats to them or their habitats. The UDWR considers pika to be a sensitive mammal species and SSC due to limited distribution (Messmer *et al.* 1998, p. 57). The UDWR administrative rules designate pikas as nongame mammals. A Utah certificate of registration is required in order to take nongame mammals (UDWR 2007). Usually such certificates pertain to banding, collection, salvage, depredation, fishing events, dog trials, or possession of live birds or certain ungulates. We do not know how likely it is that an applicant would be approved to kill or possess pikas. This designation protects pikas from direct harm, but does not offer protection to pika habitat.

Montana

Pikas are considered to be a nongame animal (MCA 2009 87-5-102), as they are not a nuisance animal (MCA 2009 80-7-1101) or expressly otherwise named in Montana's hunting regulations (MFWP 2009). It is illegal to take, possess, transport, export, sell, or offer them for sale (MCA 2009 87-5-106). This designation protects pikas from direct harm, but does not offer protection to pika habitat.

Montana Fish, Wildlife and Parks (MFWP) has identified pika as a species with greatest inventory need (MFWP 2005, p. 410) in their CWCS. They are not on Montana's Animal Species of Concern list (MNHP 2009), which is the list MFWP refers to when implementing their CWCS. Pikas are designated as a Tier 3 species in Montana, meaning they have a lower conservation need because

they are either abundant and widespread or they have adequate conservation already in place (MFWP 2005, pp. 32, 444).

Wyoming

Pikas are not listed as a species of concern under Wyoming's CWCS (Wyoming Department of Game and Fish 2005). Wyoming's Nongame Wildlife Regulations (WGFD 1998, p. 20) consider pikas as "protected animals" which means they may only be taken after the issuance of a scientific or educational permit. This designation protects pikas from direct harm, but does not offer protection to pika habitat.

Colorado

The Colorado Division of Wildlife has designated pika as nongame wildlife and "protected" (CDOW 2009, p. 17). Their harassment, taking, or possession is prohibited unless permitted under a license from the State. This designation protects pikas from direct harm, but does not offer protection to pika habitat. Pikas are not mentioned in Colorado's CWCS.

New Mexico

New Mexico's CWCS lists the Goat Peak pika (was *Ochotona princeps nigrescens*, now included in *O. p. saxatilis*) as a species of greatest conservation need as well as vulnerable and State sensitive (NMDGF 2006, pp. 55 and 57).

The New Mexico Department of Game and Fish has designated pika as a "protected species" (19 NMAC 36.2). As such, take of pikas is prohibited without a permit or license from the State. This designation protects pikas from direct harm, but do not offer protection to pika habitat.

Summary of Factor D in the United States

In summary, American pika habitat that occurs in the United States on public land is protected by several laws including the Wilderness Act of 1964; the National Forest Management Act of 1976, as amended; the Federal Land Policy and Management Act of 1976, as amended; the NPS Organic Act of 1916; the Sikes Act of 1960; and the National Wildlife Refuge System Improvement Act of 1997. Additionally, the American pika receives some protection under State laws in Washington, Oregon, California, Idaho, Nevada, Utah, Montana, Wyoming, Colorado, and New Mexico. Each State's fish and wildlife agency has some version of a CWCS in place. All of these States have regulations that protect pikas from direct harm, but do not offer protection to pika habitat.

Canada

National Regulations

Parks Canada is committed to protecting the natural heritage of their parks and ensuring that they remain healthy and whole (Parks Canada 2002). Hunting is prohibited in all Canadian National Parks, Regional District Parks, National Wildlife Areas, and Migratory Bird Sanctuaries unless a special Federal permit is granted or notices to the contrary are posted. Numerous Provincial and National Parks occur within the range of *O. p. princeps* in Canada, and overlap a large portion of the known occupied pika habitat there (BritishColumbia.com 2009; Government of Alberta 2009c). Where pikas occur in National Parks in Canada, their habitat is likely to be protected from loss or degradation due to the manner in which Parks are managed, and individual pikas would be protected from direct harm. Currently, the pika has no status under Canada's Species at Risk Act (Government of Canada 2002).

Provincial Regulations

British Columbia

In British Columbia, all native species of animals in the province (excluding invertebrates and fish) as well as several nonnative species have been designated as wildlife, giving them full protection under the Wildlife Act (Ministry of Environment British Columbia 1996, Chapter 488). These species may not be hunted, killed, captured, kept as pets, or used for commercial purposes unless specifically allowed by regulation or by authority of a permit from the Ministry of Environment. This designation protects individual pikas from direct harm, but does not offer protection to pika habitat.

Under British Columbia's Forest and Range Practices Act (Ministry of Forests and Range 2008), it is illegal for individuals to cause environmental damage. Updated regulations define environmental damage to include any change to soil that adversely alters an ecosystem. Under the new provision, individuals found to have caused environmental damage may be fined or jailed or both. This law applies on Crown lands as well as on private lands. This law helps to protect pika habitat within British Columbia's portion of the *Ochotona princeps fenisex* and *Ochotona princeps princeps* subspecies.

Alberta

In Alberta, it is illegal to hunt or trap pika because they are a nongame species, which are illegal to hunt or trap without a special collection permit. American pika are not listed by name in either Alberta's hunting or trapping regulations (Government of Alberta 2009a, 2009b).

Summary of Factor D in Canada

In summary, individual pikas in Canada are protected from human-caused direct mortality, and the majority of habitat is protected as well. No threats have been documented to be occurring to pikas in Canada. Therefore, we find that the level of protection in Canada appears to be sufficient to protect the portions of the two American pika subspecies (*Ochotona princeps fenisex* and *O. p. princeps*) that occur within Canada.

Summary of Factor D

As described under Factor A, a factor potentially affecting four out of the five subspecies is loss of lower elevation habitat due to increased summer surface temperatures. While the Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*), as amended, requires the EPA to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health, the EPA does not have regulations in place to control the emissions of greenhouse gases. The EPA's December 7, 2009 endangerment finding signals that regulations might be developed in the future; however, the contents and effectiveness of any such regulation is uncertain. Therefore, there are no known existing regulatory mechanisms currently in place at the local, State, national, or international level that effectively address these types of climate-induced threats to pika habitat. However, we determined in Factor A that climate change would not adversely affect the American pika at the species or subspecies level now or within the foreseeable future. Therefore, any inadequacy of existing regulatory mechanisms to address the threat of climate change do not now or will not result in adverse impacts to the five subspecies or species as a whole within the foreseeable future.

Based on our analysis of the existing regulatory mechanisms, we have found a diverse network of laws and regulations that provide varied protections to the American pika and its habitat rangewide. Specifically, American pika habitat that occurs in the United States on public land is

protected by the Wilderness Act of 1964; the National Forest Management Act of 1976, as amended; the Federal Land Policy and Management Act of 1976, as amended; the NPS Organic Act of 1916; the Sikes Act of 1960; and the National Wildlife Refuge System Improvement Act of 1997. Additionally, the American pika receives some protection under State laws in Washington, Oregon, California, Idaho, Nevada, Utah, Montana, Wyoming, Colorado, and New Mexico. Each State's fish and wildlife agency has some version of a CWCS in place, and all of these States have regulations that protect pikas from direct harm, but do not offer protection to pika habitat. Two American pika subspecies (*Ochotona princeps fenisex* and *O. p. princeps*) occur in Canada, and individual pikas are protected from human-caused direct mortality, and the majority of habitat is protected as well. No threats have been documented to be occurring to pikas in Canada. Therefore, based on our review of the best available scientific information, we conclude that adequate regulatory mechanisms are in place to protect the species, including the five subspecies, now and in the foreseeable future.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Roads

Pika habitats, such as alpine and subalpine areas, may be sensitive to disturbance from roads and the activities which occur on them. Disturbance from roads may have a permanent impact on the landscape and negative impact on pika population persistence (Beever *et al.* 2003, p. 45). Roads may destroy or isolate habitat, prevent dispersal and migration, and interfere with necessary behavior. However, a study in the Great Basin shows proximity to roads does not play a substantial role in pika extirpations when compared to other factors, such as elevation and maximum daily air temperatures (Beever 2009c, pers. comm.).

Road construction can create habitat for pikas due to placement of rubble as road grades and riprap for armoring waterways. Pikas have established colonies in human-made rock structures where none existed before in Oregon (Fontaine 2009, pers. comm.) and Washington State (Bruce 2009, pers. comm.; Wagner 2009, pers. comm.). Pikas were found to inhabit mine tailings and a rock wall in the Sierra Nevada and Great Basin Mountains (Millar *et al.* 2008, p. 1). A total of 55 sites (or 32 percent of the sites surveyed) were in areas of moderate human visitation (Millar *et al.* 2008, p. 1), many accessed by roads. Within Colorado, 44 percent of historic pika locations are within 100 m (328 ft) of a jeep or hiking trail; only one of these sites is currently unoccupied (CDOW 2009, p. 12), although the cause of unoccupancy is unknown. Therefore, while it is possible that there could be some localized impacts at pika sites near roads, we have no evidence to suggest that roads constitute a significant threat to any subspecies of pika or the American pika species as a whole.

In summary, we have documentation of pikas occurring in human-made settings and occupying sites in areas of moderate human use, and we have a study showing that presence of roads does not play a substantial role in pika extirpations at sites in the Great Basin. Therefore, we conclude that the presence of roads and their related human disturbance do not constitute a significant threat to the continued existence of the pika at either the species or subspecies level now or in the foreseeable future.

Off-Highway Vehicles and Off-Road Vehicles

We determined that off-highway vehicle (OHV) and off-road vehicle (ORV) use does not appear to be a significant threat to any subspecies of pika or the pika species now or in the foreseeable future. We used four lines of evidence to support this decision. As discussed in the 90–day finding, there is little evidence to support the hypothesis that human influence in alpine communities constitutes a range wide threat to the American pika, because the probability of direct human disturbance to population locations remains quite low. Sensitive habitats, where pikas often occur, are considered during the Federal land management planning process (70 FR 68264-68291, 16 U.S.C 1131-1136). Federal agencies monitor sensitive habitats and close roads to protect areas containing sensitive habitat (70 FR 68264-68291, 16 U.S.C 1131-1136). Vehicle restrictions are enforced under the National OHV Policy (36 CFR 212, 251, 261), Wilderness Act (16 U.S.C. 1131-1136), and local regulations (e.g., Okanogan Land and Resource Management Plan (USDA 1989, pp. 4-8) and the Wenatchee Land and Resource Management Plan (USDA 1990, pp. IV-90-91) in Washington).

Trails

Many hikers rely on trails to enter higher, more isolated areas inhabited by pikas. Trails can increase human activity near pika sites, with potential effects related to habitat disturbance and noise. However, Millar *et al.* (2008, pp. 1-2) found that of 173 occupied pika sites within the range of *Ochotona princeps schisticeps* in the Great Basin and Sierra Nevada mountain ranges: (1) 3 sites (2 percent) were on human-made structures; (2) 55 (32 percent) were in areas moderately impacted by human visitation; and (3) 3 of the occupied sites (2 percent) were within 1 m of well-used trails. Subsequent surveys revealed a total of 28 of 420 sites (7 percent) were within 1 m (3 ft) of active trails, and all 28 sites were occupied (Millar and Westfall 2009, p. 10).

Also, as discussed above, 27 of 62 historical sites (44 percent) were within 100 m (328 ft) of a jeep or hiking trail; only one of these sites was unoccupied (CDOW 2009, p. 12). Since access and disturbance by human activity does not correlate with extirpation of pika colonies, we conclude that disturbance by humans using trails is not a significant threat to pika at either the species or subspecies level now or in the foreseeable future.

Recreational Shooting

Shooting of pika is prohibited throughout most of its range. Disturbance, including construction activities and trash dumping, occurred at three out of seven sites and evidence of recreational shooting at only a single site, Smith Creek, Nevada (Beever *et al.* 2003, p. 45). The authors mention no evidence of pika mortality, only the presence of shell casings at a single site. We are not aware of any other information on recreational shooting of pika. Therefore, we conclude that while recreational shooting may occur on occasion, it is not a significant threat to the pika at either the species or subspecies level now or in the foreseeable future.

Summary of Factor E

In summary, we assessed the potential risks to pika populations from other natural or manmade factors associated with nearness to roads, nearness to trails, proximity to OHV/ORV use, and recreational shooting, and we find that there is no evidence that indicates these activities significantly threaten the continued existence of American pika, at either the species or subspecies level, now or in the foreseeable future.

Finding

As required by the Act, we considered the five factors in assessing whether the species 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 past, present, and future threats faced by the species. We reviewed the petition, information available in our files, other available published and unpublished information, and other information provided to us after the 90–day finding was published. We also consulted with recognized American pika experts and other Federal, State, and tribal agencies.

In our analysis of Factor A, we identified and evaluated the risks of the present or threatened destruction, modification, or curtailment of the habitat or range of the five subspecies of the American pika, and the species as a whole, from: (1) Climate change; (2) livestock grazing; (3) native plant succession; (4) invasive plant species; and (5) fire suppression. We determine that increased summer surface temperature from climate change is not a significant threat to the species as a whole. In our climate change risk assessment, we determined that no pika site would be adversely affected across the species' entire range of elevation, but some mid- to low elevations that contain pikas would be at risk from increased summer temperature (see Table 1 above). These relatively low elevations within pika sites that would be at risk were distributed among four of five subspecies (*Ochotona princeps princeps, O. p. fenisex*, *O. p. schisticeps* and *O. p. saxatilis*), with *O. p. uinta* not containing any populations that would be at risk. These relatively low elevation at-risk areas do not represent a significant portion of the subspecies' habitat (and, therefore, the species' habitat as a whole), especially since pikas primarily occupy high-elevation talus habitat. Therefore, we conclude the five subspecies and the entire species are not at risk from increased summer temperatures now or in the foreseeable future.

Actual risk levels from increased summer surface temperatures of pika populations at pika sites may be lower than we estimated in Factor A. Results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be overly conservative because risk estimates for pika sites were based on projections for summer surface temperatures. Because below-talus microclimate provides pikas with cool habitat during the hottest time of day during the summer, and pikas are dependent on these subsurface environments for survival, heat-stress levels experienced by pikas may be less than expected and are likely to be lower than we estimated. There is also evidence indicating the American pika can tolerate a wider range of temperatures and precipitation than previously thought (Millar and Westfall, p. 17). The American pika demonstrates flexibility in its behavior and physiology that allows it to adapt to the degree of increasing temperature that we expect within the foreseeable future. We have evidence that suggests the five American pika subspecies have persisted through climatic oscillations in the past (Hafner 1994, p. 375; Grayson 2005, p. 2103), which indicates that the species-wide pool of genetic diversity should not be greatly diminished by ongoing climate change.

We investigated the potential effects to the American pika and its habitat from interactions with domestic livestock, native plant succession, nonnative plant invasions and human fire suppression. We concluded that interactions with domestic livestock, native plant succession, nonnative plant invasions, and human fire suppression do not represent a significant threat to any of the five subspecies of the American pika and, therefore, these are not a threat to the species now or in the foreseeable future. Based on our review of the best available information, we find that the present or threatened destruction, modification, or curtailment of the American pika's habitat or range is not a threat to the five subspecies or the species as a whole now or in the foreseeable future.

During our review of the available information, we found no evidence of risks from overutilization for commercial, recreational, scientific, or education affecting any of the five subspecies of the American pika populations or the species as a whole. Therefore, we conclude that the American pika is not threatened by overutilization for commercial, recreational, scientific, or educational purposes now or in the foreseeable future.

We found that while pikas are hosts to several species of internal parasites as well as species of fleas and ticks, only one record exists of a disease-related morality of a single pika from plague in northern California. Additionally, we note that, while pikas may be prey for numerous species, no information indicates that predation has an overall adverse effect on the species. We find that neither disease nor predation is a threat to any of the five subspecies of the American pika and, therefore, neither disease nor predation is a significant threat to the species now or in the foreseeable future.

Based on our analysis of the existing regulatory mechanisms, we have found a diverse network of laws and regulations that provide protections to the American pika and its habitat on Federal lands in the United States. There are no known existing regulatory mechanisms currently in place at the local, State, national, or international level that effectively address climate-induced threats to pika habitat. However, we determined that climate change would not adversely affect the American pika at the species or subspecies level now or within the foreseeable future. Additionally, the American pika receives some protection under State laws in Washington, Oregon, California, Idaho, Nevada, Utah, Montana, Wyoming, Colorado, and New Mexico. Each State's fish and wildlife agency has some version of a CWCS in place, and all of these States have regulations that protect pikas from direct harm, but do not offer protection to pika habitat. Two American pika subspecies (*Ochotona princeps fenisex* and *O. p. princeps*) occur in Canada, and individual pikas are protected from human-caused direct mortality, and the majority of habitat is protected as well. No threats have been documented to be occurring to pikas in Canada. Therefore, based on our review of the best available scientific information, we conclude that adequate regulatory mechanisms are in place to protect the species and the five subspecies now and in the foreseeable future.

We also assessed the potential risks to pika populations from other natural or manmade factors associated with nearness to roads, trails, and OHV/ORV use, and associated with recreational shooting, and we find that there is no evidence that indicates these activities significantly threaten the continued existence of American pika, at either the species or subspecies level, now or in the foreseeable future.

Our review of the best available scientific and commercial information pertaining to the five factors does not support the assertion that there are threats of sufficient imminence, intensity, or magnitude as to cause substantial losses of population distribution or viability of the American pika or any of its five subspecies. Therefore, we do not find that the American pika is in danger of extinction (endangered), nor is it likely to become endangered within the foreseeable future (threatened) throughout its range. As a result, we determine that listing the American pika at the species or subspecies level, as endangered or threatened under the Act is not warranted at this time.

Distinct Vertebrate Population Segments (DPSs)

After assessing whether the species and subspecies are endangered or threatened throughout their range, we next consider whether any DPS of American pika meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened). In this case, because we have determined that portions of the *Ochotona princeps fenisex* subspecies, *O. p. princeps, O. p. saxatilis* subspecies, and portions within the Great Basin of the *O. p. schisticeps* subspecies are likely to experience increased extirpations of pika within the forseeable future, we analyzed whether any of these areas meet the definition of a DPS.

Distinct Vertebrate Population Segments

Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for an addition to or a removal from the Federal List of Endangered and Threatened Wildlife. These elements include: (1) The discreteness of a population in relation to the remainder of the taxon to which it belongs; (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting (removal from the list), or reclassification (i.e., whether the population segment is endangered or threatened).

In our analysis of Factor A, we partnered with NOAA to assess historical and future temperature projections for the western United States. In the assessment, 22 pika sites were identified for analysis representing the five subspecies across the range of the species. We determined that certain populations of *Ochotona princeps schisticeps, O. p. fenisex*, *O. p. princeps*, and *O. p. saxatilis* are currently at risk or would be at risk in the foreseeable future from the threat of increased summer temperature (see Table 1 above). These subpopulation include: (1) Southeastern Oregon, Monitor Hills, southern Wasatch Mountains, Toiyabe Mountains, and Warner Mountains for *Ochotona princeps schisticeps*; (2) Mt. St. Helens for *O. p. fenisex*; (3) Glacier National Park, Northern Wasatch Mountains, Ruby Mountains, and Sawtooth Mountain Range for *O. p. princeps*; and (4) Sangre de Cristo Mountains and Southern Rockies for *O. p. saxatilis*. Because we have identified climate change as being a potential factor that may influence the future distribution of the four subspecies listed above, we analyzed these areas to determine whether they meet our DPS policy.

Discreteness

Under the DPS policy a population segment of a vertebrate taxon 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; and (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 begin our analysis of discreteness by addressing the first condition listed above (markedly separate).

Ochotona princeps schisticeps in southeastern Oregon, Monitor Hills, southern Wasatch Mountains, Toiyabe Mountains, and Warner Mountains

American pikas are distributed across a subset of Great Basin mountain ranges, including the mountains of southeastern Oregon, Monitor Hills, southern Wasatch Mountains, Toiyabe Mountains, and Warner Mountains (hereafter, *O. p. schisticeps* subpopulation or Great Basin subpopulation) and typically found at high elevations within this geographic area. Geographical features, such as broad desert valleys, are effective at isolating these patches and serve as barriers to gene flow between pika metapopulations belonging to the same subspecies (Meredith 2002, pp. 47-48, 53; Grayson 2005, p. 2104). In the numerous "sky islands" of the Great Basin, American pikas are isolated (greater than the maximum estimated individual dispersal distance (10 to 20 km; 6.2 to 12.4 mi) of the species from the nearest extant population by these geographic barriers (Hafner 1994, pp. 376-378). These barriers eliminate dispersal of pikas between and among mountain ranges. Because temperatures in these valleys often exceed the physiological constraints of pikas (e.g., valley temperatures often are greater than or equal to 28 °C (82.4 °F)), pikas are unable to disperse to other mountain ranges and are now confined to a subset of ranges within the Great Basin.

We would expect a higher probability of long-distance dispersal in suitable habitat containing favorable climate conditions within mountain ranges occupied by the *O. p. schisticeps* subpopulation. Within cool habitat, such as high elevation talus slopes, populations separated by less than 20 km (12.4 mi) might experience occasional contact (Hafner 1993, p. 378; Hafner 1994, p. 380). Unsuitable, low-elevation habitat ranging from 3 to 8 km (1.9 to 5.0 mi) can act as a complete barrier to gene flow in Great Basin pika populations (Meredith 2002, p. 54). In low elevations, distances of as little as 300 m (984 ft) can be effective barriers to pika dispersal (Smith 1974a, p. 1116). Therefore, given the current distribution and the physiological and physical limitations of the species, we expect few successful dispersal events from populations within the *O. p. schisticeps* subpopulation to adjacent habitats outside of this subpopulation.

Analyses of genetic similarity among pikas of increasing geographic separation demonstrate that metapopulations are separated by somewhere between 10 and 100 km (Hafner and Sullivan 1995, p. 312). More substantial gene flow occurs within mountain ranges containing continuous or semi-continuous habitat than between mountain ranges that may be separated by geographical barriers to dispersal (Peacock 1997, p. 346; Meredith 2002, p. 48). Genetic substructure within subspecies and discontinuity among metapopulations is evident within the American pika. However, the genetic distinctiveness of population segments below the subspecies level is not necessarily correlated with biological and ecological significance, especially when it is not clear which populations contain relatively higher genetic variability. Geneticists have suggested resolution of genetic structure and connectivity below the subspecies level is required before management at finer scales below the subspecies level is warranted (Galbreath *et al.* 2009b, p. 33). Great Basin pika populations separated by geographic barriers to dispersal can develop distinct genetic signatures (Meredith 2002, pp. 37, 44, 46). Analyses of genetic distance demonstrate population differentiation as well (Hafner and Sullivan 1995, p. 306). Additionally, we have genetic information that provides evidence of this separation, such as the Great Basin subpopulation having mitochondrial deoxyribonucleic acid (DNA) haplotypes (a combination of forms of a

gene at multiple specific locations on the same chromosome) that are different from other *O. p. schisticeps* populations (Galbreath *et al.* 2009a, Figures 1 and 2; Galbreath *et al.* 2009b, p. 19, Figures 1, 4, and 5). These lines of genetic evidence indicate that the Great Basin *O. p. schisticeps* subpopulation is markedly separated from other *O. p. schisticeps* populations.

In summary, physical barriers to dispersal within the Great Basin *O. p. schisticeps* subpopulation, such as warmer valleys, and physiological factors limit the connectivity of pikas between and among isolated sites. Genetic analyses demonstrate that geographic barriers to dispersal can isolate pikas and cause populations to form distinct genetic signatures over ecological time. Therefore, we determined that the Great Basin *O. p. schisticeps* subpopulation under threat of climate change is markedly separate from other *O. p. schisticeps* populations as a consequence of physical, physiological, and ecological factors. We also have genetic information that demonstrates evidence of this separation, although we believe it is of limited use with respect to its correlation with biological and ecological significance for the subpopulation. We conclude that the *O. p. schisticeps* subpopulation is discrete under the Service's DPS policy.

Ochotona princeps fenisex at Mt. St. Helens

Similar physical, physiological, and ecological factors that we determined markedly separate the Great Basin *O. p. schisticeps* subpopulation from other *O. p. schisticeps* populations also play a role in separating the Mt. St. Helens subpopulation from other *O. p. fenisex* populations. These factors include: (1) Physical barriers to dispersal; (2) physiological restraints, such as sensitivity to high temperatures, that limit dispersal; and (3) the patchy nature of the subspecies' distribution typically at high elevations. Additionally, we have genetic information that provides evidence of this separation, such as the Mt. St. Helens subpopulation having mitochondrial DNA haplotypes that are different from other *O. p. fenisex* populations (Galbreath *et al.* 2009a, Figures 1 and 2; Galbreath *et al.* 2009b, p. 19, Figures 1, 4, and 5).

We determined that the Mt. St. Helens subpopulation under threat of climate change is markedly separate from other *Ochotona princeps fenisex* populations as a consequence of physical, physiological, and ecological factors. We also have genetic information that demonstrates evidence of this separation, although we believe it is of limited use with respect to its correlation with biological and ecological significance for the subpopulation. We conclude that the Mt. St. Helens subpopulation is discrete under the Service's DPS policy.

Ochotona princeps princeps in Glacier National Park, Northern Wasatch Mountains, Ruby Mountains, and Sawtooth Mountain Range

Similar physical, physiological, and ecological factors that we determined markedly separate the Great Basin *Ochotona princeps schisticeps* subpopulation from other *O. p. schisticeps* populations also play a role in separating the Glacier National Park, Northern Wasatch Mountains, Ruby Mountains, and Sawtooth Mountain Range population segment (here after, *O. p. princeps* subpopulation) from other *O. p. princeps* populations. These factors include: (1) Physical barriers to dispersal; (2) physiological restraints, such as sensitivity to high temperatures, that limit dispersal; and (3) the patchy nature of the subspecies' distribution typically at high elevations. Additionally, we have genetic information that provides evidence of this separation, such as the Ruby and Northern Wasatch Mountains populations having mitochondrial DNA haplotypes that are different from other *O. p. princeps* populations (Galbreath *et al.* 2009b, p. 19, Figures 1, 2, and 5).

We determined that the *Ochotona princeps princeps* subpopulation under threat of climate change is markedly separate from other *O. p. princeps* populations as a consequence of physical, physiological, and ecological factors. We also have genetic information that demonstrates evidence of this separation, although we believe it is of limited use with respect to its correlation with biological and ecological significance for the subpopulation. We conclude that the *O. p. princeps* subpopulation is discrete under the Service's DPS policy.

Ochotona princeps saxatilis in the Sangre de Cristo Mountains and Southern Rockies

Similar physical, physiological, and ecological factors that we determined markedly separate the Great Basin *Ochotona princeps schisticeps* subpopulation from other *O. p. schisticeps* populations also play a role in separating the Sangre de Cristo Mountain and Southern Rockies subpopulation (here after, *O. p. saxatilis* subpopulation) from other *O. p. saxatilis* populations. These factors include: (1) Physical barriers to dispersal; (2) physiological restraints, such as sensitivity to high temperatures, that limit dispersal; and (3) the patchy nature of the subspecies' distribution typically at high elevations. Additionally, we have genetic information that provides evidence of this separation, such as the Sangre de Cristo Mountains and Southern Rocky Mountains populations having mitochondrial DNA haplotypes that are different from other *O. p. saxatilis* populations (Galbreath *et al.* 2009b, p. 19, Figure 1, 2 and 5).

We determined that the *Ochotona princeps saxatilis* subpopulation under threat of climate change is markedly separate from other *O. p. saxatilis* populations as a consequence of physical, physiological, and ecological factors. We also have genetic information that demonstrates evidence of this separation, although we believe it is of limited use with respect to its correlation with biological and ecological significance for the subpopulation. We conclude that the *O. p. saxatilis* subpopulation is discrete under the Service's DPS policy.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light of Congressional guidance that the authority to list DPSs be used "sparingly" while encouraging the conservation of genetic diversity. In making this determination, we consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon;

(3) Evidence that the discrete population segment represents the only

surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

A population segment needs to satisfy only one of these conditions to be considered significant. Furthermore, other information may be used as appropriate to provide evidence for significance.

Persistence of the population segment in an ecological setting that is unusual or unique for the taxon

We evaluated all discrete population segments (described as subpopulations under Discreteness) to determine if any population segment persists in an ecological setting this is unusual or unique for the species. Our analysis for each subpopulation is provided below.

Pikas occupying habitat in the *Ochotona princeps schisticeps* subpopulation in the Great Basin are found in what has been described as talus or rockslides (Smith and Weston 1990, p. 4), where talus can be more specifically described as rock-ice or non-rock-ice features (Millar and Westfall 2009, pp. 6, 18). Talus fields are typically fringed by suitable vegetation for foraging. Great Basin pika sites have been associated with diverse vegetation associations (Millar and Westfall 2009, p. 10) and a pika's generalist diet can include a wide variety of plant material (Huntly *et al.* 1986, p.143; Beever *et al.* 2008, p. 14). Pika populations in the Great Basin not only occur adjacent to alpine meadow habitat, but also have been documented at relatively lower elevations persisting under a diet consisting of plants that commonly include *Elymus cinereus* (Great Basin wild rye), *Artemisia tridentata* (sagebrush), *Rosa woodsii* (wild rose), and *Bromus tectorum* (cheatgrass) (Beever *et al.* 2008, p. 14; Collins 2009 pers. comm.).

Pikas inhabiting the Mt. St. Helens subpopulation of *Ochotona princeps fenisex* are found in talus, rockslides, or in the case of 2 of 8 populations, they can be found in log piles (Bevers 1998, pp. 68, 70-71). The studies on Mt. St. Helens suggest that pikas are more opportunistic in habitat use than has been previously described (Bevers 1998, p. 72). Populations from Mt. St. Helens were associated with forage items that include forbs, trees, and ferns (Bevers 1998, p. 75).

Pikas inhabiting the *Ochotona princeps princeps* subpopulation are found in talus or rockslides generally at high elevations (Meredith 2002, p. 8; UDWR 2009, p. 8; USFS 2009b, pp. 2-6). We do not have information to the specific type of ecological setting that is occupied by the populations inhabiting these segments, but we expect the habitats to contain features that have been previously described for the species.

Pikas inhabiting the *Ochotona princeps saxatilis* subpopulation are described as occupying talus slopes situated in cool, moist habitats of the alpine tundra and subalpine forests (Fitzgerald *et al.* 1994 cited in CDOW 2009, p. 3). We do not have information to the specific type of ecological setting that is occupied by this subpopulation, but we expect the habitats to contain features that have been previously described for the species.

For the purposes for determining significance in a DPS analysis, we look at whether the settings occupied in the area under consideration are unique or unusual to the taxon in question, and whether the persistence of the population in the unique or unusual ecological setting may provide a behavioral or physiological adaptation that would be significant to the taxon as a whole. Thus, for this analysis, we analyzed whether the discrete population segments constitute an unusual or unique ecological setting for each of the four subspecies of the pika under consideration. Pikas select habitat that includes topographical features characterized by rocks or other surface features, such as log piles, large enough to provide necessary interstitial spaces for subsurface movement and microclimate conditions suitable for pika survival by creating cooler refugia in summer months and insulating individuals in colder, winter months (Beever 2002, p. 27; Millar and Westfall 2009, pp. 19-21). Pikas also select habitats that contain forage vegetation that is accessible within distances comparable to dimensions of home ranges (Beever 2002, p. 28). Occupied habitats within the population segments under consideration do not constitute an unusual or unique setting for the pika because they fall within the species' typical ecological niche, and there does not appear to be any behavioral or physiological differences in these population segments that result from ecological pressures in their specific geographic areas. Additionally, the food resources used by pika in these areas are similar to those found elsewhere throughout the range. No information indicates that American pika habitat in the four population segments under consideration constitutes an unusual or unique ecological setting for the species.

Evidence that loss of the discrete population segment would result in a significant gap in the range of taxon

We evaluated all discrete population segments (described as subpopulations under Discreteness) to determine if loss of any population segment would result in a significant gap in the range of the subspecies to which the population segment belongs. Our analysis for each subpopulation is provided below.

Ochotona princeps schisticeps or Great Basin Subpopulation

Pika sites potentially at risk of extirpation in the foreseeable future from increased summer surface temperatures from climate change within the *O. p. schisticeps* subpopulation (see Table 1 above) occur at relatively low elevations. Pika sites within this same subpopulation at higher elevations, where pikas more typically occupy suitable talus habitat, are not at risk from climate change now or in the foreseeable future. Therefore, within the subpopulation, not all pika sites are potentially at risk from the effects of climate change, and results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be conservative because risk estimates for pika sites were based on projections for summer surface temperatures. As stated under Discreteness, in the numerous "sky islands" of the Great Basin, American pikas are isolated (greater than the maximum estimated individual dispersal distance (10 to 20 km, or 6.2 to 12.4 mi of the species from the nearest extant population) by these geographic barriers (Hafner 1994, pp. 376-378). These barriers eliminate dispersal of pikas between and among mountain ranges. Because temperatures in these valleys often exceed the physiological constraints of pikas (e.g., valley temperatures often exceed greater than or equal to 28 °C (82.4 °F)), pikas are unable to disperse to other mountain ranges and are now confined to a subset of ranges within the Great Basin, thereby creating many gaps between pika populations in the Great Basin. Because there is no opportunity for populations to interact between these barriers, the loss of a pika site potentially at risk from increased summer surface temperatures may potentially create an additional gap in the range of the subspecies, however, we have determined that the possible loss of the pika occurrence would not result in the creation of a significant gap

in the range of the subspecies. Our basis for this determination is that loss of the pika occurrence would not result in a gap that is biologically significant for subspecies since they are already highly fragmented throughout the Great Basin. Additionally, the amount of suitable habitat and number of pika populations in the *O. p. schisticeps* subpopulation is small when compared to the Sierra Nevada Mountain Range in the remainder of the range of the subspecies.

Therefore, the contribution of the *Ochotona princeps schisticeps* subpopulation to the subspecies as a whole is small, and loss of the population segment would not result in a significant gap in the range of the subspecies.

Ochotona princeps fenisex or Mt. St. Helens Subpopulation

One out of a total of eight known pika populations on Mt. St. Helens (Bevers 1998, pp. 68, 70-71) is potentially at risk of extirpation from increased summer surface temperatures from climate change within the *O. p. fenisex* subpopulation in the foreseeable future (see Table 1 above) and occurs at relatively low elevations. Pika sites within this same subpopulation at higher elevations, where pikas more typically occupy suitable talus habitat, are not at risk from climate change now or in the foreseeable future. Therefore, within the subpopulation, not all pika sites are potentially at risk from the effects of climate change, and results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be conservative because risk estimates for pika sites were based on projections for summer surface temperatures.

Of the 69 unique pika observations used to generate an elevation across the range of *O. p. fenisex*, we do not anticipate risks from increased summer temperatures occurring at 98 percent (68 of 69) of the observation points. As such, the amount of suitable habitat in the Mt. St. Helens subpopulation segment when compared to the rest of the range of the subspecies is small.

Therefore, the contribution of the Mt. St. Helens subpopulation to the subspecies as a whole is small and provides a nominal contribution ecologically and biologically to the subspecies, such that loss of the population segment would not result in a significant gap in the range of the subspecies.

Ochotona princeps princeps Subpopulation

Pika sites potentially at risk of extirpation in the foreseeable future from increased summer surface temperatures from climate change within the *O. p. princeps* subpopulation (see Table 1 above) occur at relatively low elevations. Pika sites within this same subpopulation at mid- to higher elevation talus habitat, where pikas currently occupy suitable talus habitat, are not at risk from climate change now or in the foreseeable future. Best available information suggests that pikas more frequently occupy the highest elevation talus slopes in the Northern Rocky Mountains, and based on the NOAA projected surface temperatures (see Table 1 above), these habitats are not at risk from climate change now or in the foreseeable future. Therefore, within the subpopulation, not all pika sites are potentially at risk from the effects of climate change and results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be conservative because risk estimates for pika sites were based on projections for summer surface temperatures.

Therefore, the contribution of the *Ochotona princeps princeps* subpopulation to the subspecies as a whole is small and provides a nominal contribution ecologically and biologically to the subspecies, such that loss of the subpopulation would not result in a significant gap in the range of the subspecies.

Ochotona princeps saxatilis Subpopulation

Pika sites potentially at risk of extirpation in the foreseeable future from increased summer surface temperatures from climate change within the *O. p. saxatilis* subpopulation (see Table 1 above) occur at relatively low elevations. Pika sites within this same subpopulation at mid- to higher elevation talus habitat, where pikas currently occupy suitable talus habitat, are not at risk from climate change now or in the foreseeable future. Therefore, within the subpopulation, not all pika sites are potentially at risk from the effects of climate change and results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be conservative because risk estimates for pika sites were based on projections for summer surface temperatures. Pikas inhabiting the *Ochotona princeps saxatilis* subpopulation in the Southern Rockies in Colorado are described as occupying talus slopes situated in cool, moist habitats of the alpine tundra and subalpine forests at or above 3,000 m (10,000 ft) (Fitzgerald *et al.* 1994 cited in CDOW 2009, p. 3). These habitats are extensive in Colorado and the topography of Colorado is described as follows: "Roughly three quarters of the Nation's land above 10,000 feet altitude lies within its borders. The State has 59 mountains 14,000 feet or higher, and about 830 mountains between 11,000 and 14,000 feet in elevation" (Doesken *et al.* 2003 cited in CDOW 2009, p. 3).

Therefore, the contribution of the *Ochotona princeps saxatilis* subpopulation to the subspecies as a whole is small and provides a nominal contribution ecologically and biologically to the subspecies, such that loss of the population segment would not result in a significant gap in the range of the subspecies.

Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range

The American pika survives naturally throughout much of British Columbia, Alberta, and the western United States. As such, this consideration is not applicable to any population segment of the American pika or the subspecies under consideration in the finding.

Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics

A recent extensive genetic analysis has determined there are five major genetic lineages of American pikas (Galbreath *et al.* 2009b, p. 7), which have since been interpreted as subspecies (Hafner and Smith 2009, p. 16). Galbreath *et al.* (2009b, p. 18) determined it is unlikely that additional deeply divergent lineages (i.e., subspecies) of American pika remain to be identified. Minor differences in genetic signatures can occur within each subspecies. For example, metapopulations separated by geographic barriers to dispersal can develop distinct genetic signatures (Meredith 2002, pp. 37, 44, 46). Additionally, as discussed under the Discreteness section above, mitochondrial DNA haplotypes are unique to each American pika population (Galbreath *et al.* 2009b, p. 19). However, each of the smaller genetic units (i.e., populations) can be linked back to one of five major genetic lineages. Geneticists have suggested

resolution of genetic structure and connectivity below the subspecies level is required before management at finer scales below the subspecies level is warranted (Galbreath *et al.* 2009b, p. 33).

Genetic substructure within subspecies and discontinuity among metapopulations is evident within the American pika. However, the genetic distinctiveness of population segments below the subspecies level is not necessarily correlated with biological and ecological significance, especially when it is not clear which populations contain relatively higher genetic variability. We consider genetic differences among subspecies to be markedly different. However, as indicated by Galbreath *et al.* (2009b, p. 33), information concerning the utility of genetic differences at the subspecific level for pika are lacking for use in conservation management actions. As a consequence, even though we have used the information that demonstrates apparent genetic discontinuity between the different population segments to support our arguments for discreteness under the DPS policy, for the reasons stated above, we believe that this information is of limited use with respect to its correlation with biological and ecological significance for the population and therefore the taxon as a whole and, hence, conservation value.

We determine, based on review of the best available information, that no population segment below the subspecies level is significant in relation to the remainder of the taxon. Therefore, no population segments (as described previously under Discreteness) qualify as a DPS under our 1996 DPS policy and none are a listable entity under the Act. Because we found that the *Ochotona princeps schisticeps, O. p. fenisex, O. p. princeps, and O. p. saxatilis* subpopulations do not meet the significance criterion of the DPS policy, we need not proceed with an evaluation of the threats to pikas in any of the population segments.

Significant Portion of the Range Analysis

Having determined that the American pika at the species and subspecies level do not meet the definition of an endangered or threatened species under the Act and no populations qualify under our policy, we must next consider whether there are any significant portions of the range where the species is in danger of extinction or is likely to become endangered in the foreseeable future.

The Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The term "significant portion of its range" is not defined by the statute. For the purposes of this finding, a significant portion of a species' range is an area that is important to the conservation of the species because it contributes meaningfully 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 endangered or threatened 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 endangered or threatened. 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 endangered or threatened in this portion 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 endangered or threatened there. Likewise, if the Service considers status first and determines that the species is not endangered or threatened 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 endangered or threatened there, the Service will specify that portion of the range as endangered or threatened 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.

We evaluated the American pika's current range in the context of the most

significant factor(s) affecting the species (in this case, only climate change) to determine if there is any apparent geographic concentration of potential threats. As identified under the threats assessment in Table 1 above, the threat of recent, current, and future increased summer surface temperature from climate change is primarily concentrated in portions of the range of *Ochotona princeps schisticeps, O. p. fenisex, O. p. princeps and O. p. saxatilis.* We defined the portion of the range for these subpopulation to include: (1) The lower elevation portions of southeastern Oregon, Monitor Hills, southern Wasatch Mountains, and Toiyabe Mountains, and the low- and mid-elevations of the Warner Mountains for *O. p. schisticeps*; (2) the low-elevation portion of Mt. St. Helens for *O. p. fenisex*; (3) the low-elevation portion of Glacier National Park and the Sawtooth Mountain Range, and low- to mid-elevation portion of the Northern Wasatch Mountains and Ruby Mountains for *O. p. princeps*; and (4) the low-elevation portion of the Sangre de Cristo Mountains and Southern Rockies for *O. p. saxatilis.*

Ochotona princeps schisticeps

As stated above, we defined the portion of the range for *Ochotona princeps schisticeps* as the lower elevation portions of the Great Basin in southeastern Oregon, Monitor Hills, southern Wasatch Mountains, and Toiyabe Mountains, and the low and mid-elevations of the Warner Mountains. As stated under Discreteness in the DPS section of this finding, in the numerous "sky islands" of the Great Basin, American pikas are isolated (greater than the maximum estimated individual dispersal distance (10 to 20 km; 6.2 to 12.4 mi) of the species from the nearest extant population) by these geographic barriers (Hafner 1994, pp. 376-378). These barriers eliminate dispersal of pikas between and among mountain ranges. Because temperatures in these valleys often exceed the physiological constraints of pikas (e.g., valley temperatures often exceed greater than or equal to 28 °C (82.4 °F)), pikas are unable to disperse to other mountain ranges and are now confined to a subset of ranges within the Great Basin, thereby creating many gaps between pika populations in the Great Basin. However, there are pika populations in suitable habitat at mid- to high elevations on the "sky islands" of the Great Basin that are not at risk of extirpation from increased summer temperatures from climate change, ensuring adequate redundancy and resiliency across the portion of the range under consideration.

Additionally, the amount of suitable habitat and number of pika populations in the Great Basin portion when compared to the range of the rest of the subspecies in the Sierra Nevada Mountain Range is small. There are larger, contiguous blocks of suitable habitat in the Sierra Nevada Mountains, none of which was identified as potentially at risk from climate change. Approximately 64 percent of the subspecies' suitable habitat occurs in the Sierra Nevada (Finn 2009, pp. 1-2), ensuring adequate redundancy and resiliency across the subspecies.

Galbreath *et al.* (2009b, pp. 20-21) demonstrated that three distinct mitochondrial DNA clades (genetically similar groups that share a common ancestor) are evident within *Ochotona princeps schisticeps*; however, Galbreath (2009, pers. comm.) also states there is not sufficient evidence at this point to distinguish among the three subregions of *O. p. schisticeps* as distinct evolutionary significant entities. Genetic substructure at the nuclear DNA level needs to be elucidated before northern (eastern Oregon/northern California), central (Sierra Nevada Range and central Nevada), and eastern (western Utah) subclades are evident. Therefore, at this point, there are no subclades (genetically different groups) associated with *O. p. schisticeps* (Galbreath *et al.* 2009b, p. 55, Figure 5). Hafner and Smith (2009, pp. 12-14) recently performed analyses of morphometric variation among American pikas, but did not make any conclusions about morphology differences between *O. p. schisticeps* populations. Therefore, based on the best available information, we have determined that this portion of the range does not contribute to the diversity of genetic, morphological, or physiological diversity of the subspecies, and there is adequate representation across the portion of *O. p. schisticeps* under consideration and the rest of the range of the subspecies.

For these reasons, we conclude that no portions of the *Ochotona princeps schisticeps*' range warrant further consideration as a significant portion of the range. We do not find that the *O. p. schisticeps* is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened) throughout all or a significant portion of its range.

Ochotona princeps fenisex

As stated above, we defined the portion of the range for *Ochotona princeps fenisex* as the low-elevation portion of Mt. St. Helens. One out of a total of eight known pika populations on Mt. St. Helens (Bevers 1998, pp. 68, 70-71) is potentially at risk of extirpation from increased summer surface temperatures from climate change within the *O. p. fenisex* subpopulation in the foreseeable future (see Table 1 above) and occurs at relatively low elevations. Pika sites on Mt. St. Helens at higher elevations, where pikas more typically occupy suitable talus habitat, are not at risk from climate change now or in the foreseeable future, ensuring adequate redundancy and resiliency across the portion of the range under consideration. Therefore, not all pika sites on Mt. St. Helens are potentially at risk from the effects of climate change, and as stated under Factor A, results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be conservative because risk estimates for pika sites were based on projections for summer surface temperatures.

Of the 69 unique pika observations used in our analysis to generate an elevation across the range of *O. p. fenisex*, we do not anticipate risks from increased summer temperatures occurring at 98 percent (68 of 69) of the observation points. As such, the amount of suitable habitat in the Mt. St. Helens subpopulation segment when compared to the rest of the range of the subspecies is small. There are larger, contiguous blocks of suitable habitat in the Coast and Cascade Mountains, none of which was identified as potentially at risk from climate change, ensuring adequate redundancy and resiliency across the range of the subspecies.

Galbreath *et al.* (2009b, p. 19) demonstrated Cascade Range populations also were closely related, though they did not form an unambiguous clade (group) descending from an ancestor. However, Galbreath (2009, pers. comm.) also states there is not sufficient evidence at this point to distinguish among *O. p. fenisex* as distinct evolutionary significant entities. Therefore, at this point, there are no subclades (genetically different groups) associated with *O. p. fenisex* (Galbreath *et al.* 2009b, Figure 5). Hafner and Smith (2009, pp. 12-14) recently performed analyses of morphometric variation among American pikas, but did not make any conclusions about morphology differences between *O. p. fenisex* populations. Therefore, based on the best available information, we have determined that this portion of the range does not contribute to the diversity of

genetic, morphological, or physiological diversity of the subspecies, and there is adequate representation across the portion of *O. p. fenisex* under consideration and the rest of the range of the subspecies.

For these reasons, we conclude that no portions of the *Ochotona princeps fenisex's* range warrant further consideration as a significant portion of the range. We do not find that the *O. p. fenisex* is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range.

Ochotona princeps princeps

As stated above, we defined the portion of the range for *Ochotona princeps princeps* as the low-elevation portion of Glacier National Park and Sawtooth Mountain Range, and low- to mid-elevation portion of the Northern Wasatch Mountains and Ruby Mountains. Pika sites at higher elevations on the same mountains, where pikas more typically occupy suitable talus habitat, are not at risk from climate change now or in the foreseeable future, ensuring adequate redundancy and resiliency across the portion of the range under consideration. Therefore, not all pika sites in this portion under consideration are potentially at risk from the effects of climate change, and results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be conservative because risk estimates for pika sites were based on projections for summer surface temperatures.

This portion of the range includes the southwestern and parts of the central portion of the subspecies' range. However, the amount of suitable habitat in this portion of the range when compared to the rest of the range of the subspecies that will not be at risk from climate change in the foreseeable future is small. There are larger, contiguous blocks of suitable habitat in the northern Rocky Mountains, none of which was identified as potentially at risk from climate change, ensuring adequate redundancy and resiliency across the range of the subspecies.

The *Ochotona princeps princeps* lineage is partitioned into northwestern and southeastern genetic phylogroups (type of pika group) (Galbreath *et al.* 2009b, pp. 19-20, 55). Pika populations in the Northern Wasatch and Ruby Mountains make up a portion of the southeastern phylogroup, and Glacier National Park and Sawtooth Range pika populations make up a small portion of the northwestern phylogroup. All suitable habitat in Wyoming and northern Colorado, which are not part of the portion of the range under consideration, make up a substantial portion of the southeastern phylogroup. Additionally, the majority of the northwestern phylogroup is made up of pika populations occurring outside the portion of the range at risk from climate change.

Although there are some genetic (mitochondrial DNA) differences between phylogroups, there is not sufficient evidence at this point to distinguish among *O. p. fenisex* as distinct evolutionary significant entities beyond the subspecies level (Galbreath *et al.* 2009b, Figure 5). Hafner and Smith (2009, pp. 12-14) recently performed analyses of morphometric variation among American pikas, but did not make any conclusions about morphology differences between O. *p. princeps* populations. Therefore, based on the best available information, we have determined that this portion of the range does not contribute to the diversity of genetic, morphological, or physiological diversity of the subspecies, and there is adequate representation across the portion of *O. p. princeps* under consideration and the rest of the range of the subspecies.

For these reasons, we conclude that no portions of the *Ochotona princeps princeps*' range warrant further consideration as a significant portion of the range. We do not find that the *O. p. princeps* is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range.

Ochotona princeps saxatilis

As stated above, we defined the portion of the range for *Ochotona princeps saxatilis* as the low-elevation portion of the Sangre de Cristo Mountains and Southern Rockies. Pika sites at higher elevations where there are larger, contiguous blocks of suitable habitat, where pikas more typically occupy suitable talus habitat, are not at risk from climate change now or in the foreseeable future, ensuring adequate redundancy and resiliency across the portion of the range under consideration and the range of the subspecies. Therefore, not all pika sites in this portion under consideration are potentially at risk from the effects of climate change, and as stated under Factor A, results from comparisons between below-talus summer temperatures and surface summer temperatures indicate that our risk assessment for climate change may be conservative because risk estimates for pika sites were based on projections for summer surface temperatures.

Galbreath *et al.* (2009b, pp. 20-21) demonstrated populations south of the Colorado River were closely related genetically, although sites closer to the Colorado River exhibited some morphological similarities to pikas north of the Colorado River, which is the dividing line between *Ochotona princeps saxatilis* and *O. p. princeps*. However, Galbreath *et al.* (2009b, Figure 5) also states there is not sufficient evidence at this point to distinguish among *O. p. saxatilis* as distinct evolutionary significant entities. Therefore, based on the best available information, we have determined that this portion of the range does not contribute to the diversity of genetic, morphological, or physiological diversity of the subspecies, and there is adequate representation across the portion of *O. p. saxatilis* under consideration and the rest of the range of the subspecies.

For these reasons, we conclude that no portions of the *Ochotona princeps saxatilis*' range warrant further consideration as a significant portion of the range. We do not find that the *O. p. saxatilis* is in danger of extinction (endangered) now, nor is it likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range.

We request that you submit any new information concerning the status of, or threats to, this species to our Utah Ecological Services Field 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 references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Utah Ecological Services Field Office (see **ADDRESSES** section).

Author(s)

The primary authors of this notice are the staff members of the Utah Ecological Services Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 26, 2010.

Signed: James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–2405 Filed 2–5–10; 16:15 pm]

BILLING CODE S

Federal Register

Tuesday,
February 9, 2010

Part III

Environmental Protection Agency

40 CFR Parts 50 and 58

Primary National Ambient Air Quality Standards for Nitrogen Dioxide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 58

[EPA–HQ–OAR–2006–0922; FRL 9107–9]

RIN 2060–AO19

Primary National Ambient Air Quality Standards for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Based on its review of the air quality criteria for oxides of nitrogen and the primary national ambient air quality standard (NAAQS) for oxides of nitrogen as measured by nitrogen dioxide (NO_2), EPA is making revisions to the primary NO_2 NAAQS in order to provide requisite protection of public health. Specifically, EPA is establishing a new 1-hour standard at a level of 100 ppb, based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard. EPA is also establishing requirements for an NO_2 monitoring network that will include monitors at locations where maximum NO_2 concentrations are expected to occur, including within 50 meters of major roadways, as well as monitors sited to measure the area-wide NO_2 concentrations that occur more broadly across communities.

DATES: This final rule is effective on April 12, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0922. 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, *e.g.,* confidential business information 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 through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, 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 and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Jenkins, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C504–06, Research Triangle Park, NC 27711; telephone: 919–541–1167; fax: 919–541–0237; e-mail: *jenkins.scott@epa.gov.*

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I. Background

A. Summary of Revisions to the NO_2 Primary NAAQS

Based on its review of the air quality criteria for oxides of nitrogen and the primary national ambient air quality standard (NAAQS) for oxides of nitrogen as measured by nitrogen dioxide (NO_2), EPA is making revisions to the primary NO_2 NAAQS in order to provide requisite protection of public health as appropriate under section 109 of the Clean Air Act (Act or CAA). Specifically, EPA is supplementing the existing annual standard for NO_2 of 53 parts per billion (ppb) by establishing a new short-term standard based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. EPA is setting the level of this new standard at 100 ppb. EPA is making changes in data handling conventions for NO_2 by adding provisions for this new 1-hour primary standard. EPA is also establishing requirements for an NO_2 monitoring network. These new provisions require monitors at locations where maximum NO_2 concentrations are expected to occur, including within 50 meters of major roadways, as well as monitors sited to measure the area-wide NO_2 concentrations that occur more broadly across communities. EPA is making conforming changes to the air quality index (AQI).

B. Legislative Requirements

Two sections of the CAA govern the establishment and revision of the NAAQS. Section 108 of the Act directs the Administrator to identify and list air pollutants that meet certain criteria, including that the air pollutant "in [her] judgment, cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources." 42 U.S.C. 21 7408(a)(1)(A) & (B). For those air pollutants listed, section 108 requires the Administrator to issue air quality criteria that "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *" 42 U.S.C. 7408(2).

Section 109(a) of the Act directs the Administrator to promulgate "primary" and "secondary" NAAQS for pollutants for which air quality criteria have been issued. 42 U.S.C. 7409(1).[1] Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which in the judgment of the Administrator, based on [the air quality] criteria and allowing an adequate margin of safety, are requisite to protect the public health."[2] 42 U.S.C. 7409(b)(1). A secondary standard, in turn, must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on [the air quality] criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such pollutant in the ambient air."[3] 42 U.S.C. 7409(b)(2).

The requirement that primary standards include an adequate margin of safety is intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It is also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA,* 647 F.2d 1130, 1154 (DC Cir 1980), *cert. denied,* 449 U.S.

[1] EPA notes that as the promulgation of a NAAQS is identified in section 307(d)(1) of the Clean Air Act, all of the provisions of this rulemaking are subject to the requirements of section 307(d) of the Clean Air Act.

[2] The legislative history of section 109 indicates that a primary standard is to be set at "the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population," and that for this purpose "reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group." S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10(1970).

[3] EPA is currently conducting a separate review of the secondary NO_2 NAAQS jointly with a review of the secondary SO_2 NAAQS.

1042 (1980); *American Petroleum Institute* v. *Costle,* 665 F.2d 1176, 1186 (DC Cir. 1981), *cert. denied,* 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree.

In addressing the requirement for a margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the at-risk population(s), and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA, supra,* 647 F.2d at 1161–62.

In setting standards that are "requisite" to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, EPA may not consider the costs of implementing the standards. *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 471, 475–76 (2001).

Section 109(d)(1) of the Act requires the Administrator to periodically undertake a thorough review of the air quality criteria published under section 108 and the NAAQS and to revise the criteria and standards as may be appropriate. 42 U.S.C. 7409(d)(1). The Act also requires the Administrator to appoint an independent scientific review committee composed of seven members, including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies, to review the air quality criteria and NAAQS and to "recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate under section 108 and subsection (b) of this section." 42 U.S.C. 7409(d)(2). This independent review function is performed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.

C. Related NO_2 Control Programs

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act, 42 U.S.C. 7410, and related provisions, States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration program that covers these pollutants. *See* 42 U.S.C. 7470–7479. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants under Title II of the Act, 42 U.S.C. 7521–7574, which involves controls for automobile, truck, bus, motorcycle, nonroad engine and equipment, and aircraft emissions; the new source performance standards under section 111 of the Act, 42 U.S.C. 7411; and the national emission standards for hazardous air pollutants under section 112 of the Act, 42 U.S.C. 7412.

Currently there are no areas in the United States that are designated as nonattainment of the NO_2 NAAQS. With the revisions to the NO_2 NAAQS that result from this review, however, some areas could be classified as non-attainment. Certain States will be required to develop SIPs that identify and implement specific air pollution control measures to reduce ambient NO_2 concentrations to attain and maintain the revised NO_2 NAAQS, most likely by requiring air pollution controls on sources that emit oxides of nitrogen (NO_X).[4]

While NO_X is emitted from a wide variety of source types, the top three categories of sources of NO_X emissions are on-road mobile sources, electricity generating units, and non-road mobile sources. EPA anticipates that NO_X emissions will decrease substantially over the next 20 years as a result of the ongoing implementation of mobile source emissions standards. In particular, Tier 2 NO_X emission standards for light-duty vehicle emissions began phasing into the fleet beginning with model year 2004, in combination with low-sulfur gasoline fuel standards. For heavy-duty engines, new NO_X standards are phasing in between the 2007 and 2010 model years, following the introduction of ultra-low sulfur diesel fuel. Lower NO_X standards for nonroad diesel engines, locomotives, and certain marine engines are becoming effective throughout the next decade. In future decades, these lower-NO_X vehicles and engines will become an increasingly large fraction of in-use mobile sources, effecting large NO_X emission reductions.

D. Review of the Air Quality Criteria and Standards for Oxides of Nitrogen

On April 30, 1971, EPA promulgated identical primary and secondary NAAQS for NO_2 under section 109 of the Act. The standards were set at 0.053 parts per million (ppm) (53 ppb), annual average (36 FR 8186). EPA completed reviews of the air quality criteria and NO_2 standards in 1985 and 1996 with decisions to retain the standard (50 FR 25532, June 19, 1985; 61 FR 52852, October 8, 1996).

EPA initiated the current review of the air quality criteria for oxides of nitrogen and the NO_2 primary NAAQS on December 9, 2005 (70 FR 73236) with a general call for information. EPA's draft Integrated Review Plan for the Primary National Ambient Air Quality Standard for Nitrogen Dioxide (EPA, 2007a) was made available in February, 2007 for public comment and was discussed by the CASAC via a publicly accessible teleconference on May 11, 2007. As noted in that plan, NO_X includes multiple gaseous (*e.g.,* NO_2, NO) and particulate (*e.g.,* nitrate) species. Because the health effects associated with particulate species of NO_X have been considered within the context of the health effects of ambient particles in the Agency's review of the NAAQS for particulate matter (PM), the current review of the primary NO_2 NAAQS is focused on the gaseous species of NO_X and is not intended to address health effects directly associated with particulate species.

The first draft of the Integrated Science Assessment for Oxides of Nitrogen-Health Criteria (ISA) and the Nitrogen Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment (EPA, 2007b) were reviewed by CASAC at a public meeting held on October 24–25, 2007. Based on comments received from CASAC and the public, EPA developed the second

[4] In this document, the terms "oxides of nitrogen" and "nitrogen oxides" (NO_X) refer to all forms of oxidized nitrogen (N) compounds, including NO, NO_2, and all other oxidized N-containing compounds formed from NO and NO_2. This follows usage in the Clean Air Act Section 108(c): "Such criteria [for oxides of nitrogen] shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen." By contrast, within the air pollution research and control communities, the terms "oxides of nitrogen" and "nitrogen oxides" are restricted to refer only to the sum of NO and NO_2, and this sum is commonly abbreviated as NO_X. The category label used by this community for the sum of all forms of oxidized nitrogen compounds including those listed in Section 108(c) is NO_Y.

draft of the ISA and the first draft of the Risk and Exposure Assessment to Support the Review of the NO_2 Primary National Ambient Air Quality Standard (Risk and Exposure Assessment (REA)). These documents were reviewed by CASAC at a public meeting held on May 1–2, 2008. Based on comments received from CASAC and the public at this meeting, EPA released the final ISA in July of 2008 (EPA, 2008a). In addition, comments received were considered in developing the second draft of the REA, which was released for public review and comment in two parts. The first part of this document, containing chapters 1–7, 9 and appendices A and C as well as part of appendix B, was released in August 2008. The second part of this document, containing chapter 8 (describing the Atlanta exposure assessment) and a completed appendix B, was released in October of 2008. This document was the subject of CASAC reviews at public meetings on September 9 and 10, 2008 (for the first part) and on October 22, 2008 (for the second part). In preparing the final REA (EPA, 2008b), EPA considered comments received from the CASAC and the public at those meetings.

In the course of reviewing the second draft REA, CASAC expressed the view that the document would be incomplete without the addition of a policy assessment chapter presenting an integration of evidence-based considerations and risk and exposure assessment results. CASAC stated that such a chapter would be "critical for considering options for the NAAQS for NO_2" (Samet, 2008a). In addition, within the period of CASAC's review of the second draft REA, EPA's Deputy Administrator indicated in a letter to the chair of CASAC, addressing earlier CASAC comments on the NAAQS review process, that the risk and exposure assessment will include "a broader discussion of the science and how uncertainties may effect decisions on the standard" and "all analyses and approaches for considering the level of the standard under review, including risk assessment and weight of evidence methodologies" (Peacock, 2008, p. 3; September 8, 2008).

Accordingly, the final REA included a new policy assessment chapter. This policy assessment chapter considered the scientific evidence in the ISA and the exposure and risk characterization results presented in other chapters of the REA as they relate to the adequacy of the current NO_2 primary NAAQS and potential alternative primary NO_2 standards. In considering the current and potential alternative standards, the policy assessment chapter of the final REA focused on the information that is most pertinent to evaluating the basic elements of national ambient air quality standards: Indicator, averaging time, form,[5] and level. These elements, which together serve to define each standard, must be considered collectively in evaluating the health protection afforded. CASAC discussed the final version of the REA, with an emphasis on the policy assessment chapter, during a public teleconference held on December 5, 2008. Following that teleconference, CASAC offered comments and advice on the NO_2 primary NAAQS in a letter to the Administrator (Samet, 2008b).

The schedule for completion of this review is governed by a judicial order resolving a lawsuit filed in September 2005, concerning the timing of the current review. The order that now governs this review, entered by the court in August 2007 and amended in December 2008, provides that the Administrator will sign, for publication, notices of proposed and final rulemaking concerning the review of the primary NO_2 NAAQS no later than June 26, 2009 and January 22, 2010, respectively. In accordance with this schedule, the Administrator signed a notice of proposed rulemaking on June 26, 2009 (FR 74 34404). This action presents the Administrator's final decisions on the primary NO_2 standard.

E. Summary of Proposed Revisions to the NO_2 Primary NAAQS

For the reasons discussed in the preamble of the proposal for the NO_2 primary NAAQS (74 FR 34404), EPA proposed to make revisions to the primary NO_2 NAAQS and to make related revisions for NO_2 data handling conventions in order to provide requisite protection of public health. EPA also proposed to make corresponding changes to the AQI for NO_2. Specifically, EPA proposed to supplement the current annual standard by establishing a new short-term NO_2 standard that would reflect the maximum allowable NO_2 concentration anywhere in an area. EPA proposed that this new short-term standard would be based on the 3-year average of the 99th percentile (or 4th highest) of the yearly distribution of 1-hour daily maximum NO_2 concentrations and solicited comment on using the 3-year average of the 98th percentile (or 7th or 8th highest) of the yearly distribution of 1-hour daily maximum NO_2 concentrations. EPA proposed to set the level of this new 1-hour standard within the range of 80 to 100 ppb and solicited comment on standard levels as low as 65 ppb and as high as 150 ppb. EPA proposed to specify the level of the standard to the nearest ppb. EPA also proposed to establish requirements for an NO_2 monitoring network at locations where maximum NO_2 concentrations are expected to occur, including monitors within 50 meters of major roadways, as well as area-wide monitors sited to measure the NO_2 concentrations that can occur more broadly across communities. EPA also solicited comment on the alternative approach of setting a 1-hour standard that would reflect the allowable area-wide NO_2 concentration.

F. Organization and Approach to Final NO_2 Primary NAAQS Decisions

This action presents the Administrator's final decisions regarding the need to revise the current NO_2 primary NAAQS. Revisions to the primary NAAQS for NO_2, and the rationale supporting those revisions, are described below in section II. Requirements for the NO_2 ambient monitoring network are described in section III. Related requirements for data completeness, data handling, data reporting, rounding conventions, and exceptional events are described in section IV. Implementation of the revised NO_2 primary NAAQS is discussed in sections V and VI. Communication of public health information through the AQI is discussed in section VII and a discussion of statutory and executive order reviews is provided in section VIII.

Today's final decisions are based on a thorough review in the ISA of scientific information on known and potential human health effects associated with exposure to NO_2 in the air. These final decisions also take into account: (1) Assessments in the REA of the most policy-relevant information in the ISA as well as quantitative exposure and risk analyses based on that information; (2) CASAC Panel advice and recommendations, as reflected in its letters to the Administrator and its public discussions of the ISA, the REA, and the notice of proposed rulemaking; (3) public comments received during the development of ISA and REA; and (4) public comments received on the proposed rulemaking.

Some commenters have referred to and discussed individual scientific analyses on the health effects of NO_2 that were not included in the ISA (EPA, 2008a) ("new studies"). In considering

[5] The "form" of a standard defines the air quality statistic that is to be compared to the level of the standard in determining whether an area attains the standard.

and responding to comments for which such "new studies" were cited in support, EPA has provisionally considered the cited studies in the context of the findings of the ISA.

As in prior NAAQS reviews, EPA is basing its decision in this review on studies and related information included in the ISA and staff's policy assessment, which have undergone CASAC and public review. In this NO_2 NAAQS review, staff's policy assessment was presented in the form of a policy assessment chapter of the REA (EPA, 2008b). The studies assessed in the ISA and REA, and the integration of the scientific evidence presented in them, have undergone extensive critical review by EPA, CASAC, and the public. The rigor of that review makes these studies, and their integrative assessment, the most reliable source of scientific information on which to base decisions on the NAAQS, decisions that all parties recognize as of great import. NAAQS decisions can have profound impacts on public health and welfare, and NAAQS decisions should be based on studies that have been rigorously assessed in an integrative manner not only by EPA but also by the statutorily mandated independent advisory committee, as well as the public review that accompanies this process. EPA's provisional consideration of "new studies" did not and could not provide that kind of in-depth critical review.

This decision is consistent with EPA's practice in prior NAAQS reviews and its interpretation of the requirements of the CAA. Since the 1970 amendments, the EPA has taken the view that NAAQS decisions are to be based on scientific studies and related information that have been assessed as a part of the pertinent air quality criteria, and has consistently followed this approach. This longstanding interpretation was strengthened by new legislative requirements enacted in 1977, which added section 109(d)(2) of the Act concerning CASAC review of air quality criteria. *See* 71 FR 61144, 61148 (October 17, 2006) (final decision on review of PM NAAQS) for a detailed discussion of this issue and EPA's past practice.

As discussed in EPA's 1993 decision not to revise the NAAQS for ozone (O_3), "new studies" may sometimes be of such significance that it is appropriate to delay a decision on revision of a NAAQS and to supplement the pertinent air quality criteria so the studies can be taken into account (58 FR at 13013–13014, March 9, 1993). In the present case, EPA's provisional consideration of "new studies" concludes that, taken in context, the "new" information and findings do not materially change any of the broad scientific conclusions regarding the health effects of NO_2 made in the air quality criteria. For this reason, reopening the air quality criteria review would not be warranted even if there were time to do so under the court order governing the schedule for this rulemaking.

Accordingly, EPA is basing the final decisions in this review on the studies and related information included in the NO_2 air quality criteria that have undergone CASAC and public review. EPA will consider the "new studies" for purposes of decision-making in the next periodic review of the NO_2 NAAQS, which will provide the opportunity to fully assess these studies through a more rigorous review process involving EPA, CASAC, and the public. Further discussion of these "new studies" can be found below, in section II.E, and in the Response to Comments document.

II. Rationale for Final Decisions on the NO_2 Primary Standard

This section presents the rationale for the Administrator's decision to revise the existing NO_2 primary standard by supplementing the current annual standard with a new 1-hour standard. In developing this rationale, EPA has drawn upon an integrative synthesis of the entire body of evidence on human health effects associated with the presence of NO_2 in the air. As summarized below in section II.B, this body of evidence addresses a broad range of health endpoints associated with exposure to NO_2. In considering this entire body of evidence, EPA focuses in particular on those health endpoints for which the ISA finds associations with NO_2 to be causal or likely causal. This rationale also draws upon the results of quantitative exposure and risk assessments, summarized below in section II.C.

As discussed below, a substantial amount of new research has been conducted since the last review of the NO_2 NAAQS, with important new information coming from epidemiologic studies in particular. The newly available research studies evaluated in the ISA have undergone intensive scrutiny through multiple layers of peer review and opportunities for public review and comment. While important uncertainties remain in the qualitative and quantitative characterizations of health effects attributable to exposure to ambient NO_2, the review of this information has been extensive and deliberate.

The remainder of this section provides background information that informed the Administrator's decisions on the primary standard and discusses the rationale for those decisions. Section II.A presents a discussion of NO_2 air quality. Section II.B includes an overview of the scientific evidence related to health effects associated with NO_2 exposure. This overview includes discussion of the health endpoints and at-risk populations considered in the ISA. Section II.C discusses the approaches taken by EPA to assess exposures and health risks associated with NO_2, including a discussion of key results. Section II.D summarizes the approach that was used in the current review of the NO_2 NAAQS with regard to consideration of the scientific evidence and exposure-/risk-based results related to the adequacy of the current standard and potential alternative standards. Sections II.E–II.G discuss the Administrator's decisions regarding the adequacy of the current standard, elements of a new 1-hour standard, and retention of the current annual standard, respectively, taking into consideration public comments on the proposed decisions. Section II.H summarizes the Administrator's decisions with regard to the NO_2 primary NAAQS.

A. Characterization of NO_2 Air Quality

1. Current Patterns of NO_2 Air Quality

The size of the State and local NO_2 monitoring network has remained relatively stable since the early 1980s, and currently has approximately 400 monitors reporting data to EPA's Air Quality System (AQS) database.[6] At present, there are no minimum monitoring requirements for NO_2 in 40 CFR part 58 Appendix D, other than a requirement for EPA Regional Administrator approval before removing any existing monitors, and that any ongoing NO_2 monitoring must have at least one monitor sited to measure the maximum concentration of NO_2 in that area (though, as discussed below monitors in the current network do not measure peak concentrations associated with on-road mobile sources that can occur near major roadways because the network was not designed for this purpose). EPA removed the specific

[6] It should be noted that the ISA (section 2.4.1) references a different number of active monitors in the NO_2 network. The discrepancy between the ISA numbers and the number presented here is due to differing metrics used in pulling data from AQS. The ISA only references SLAMS, NAMS, and PAMS sites with defined monitoring objectives, while Watkins and Thompson (2008) considered all NO_2 sites reporting data at any point during the year. Based on this approach, Watkins and Thompson (2008) also noted that the size of the NO_2 monitoring network has remained relatively stable since the early 1980s.

minimum monitoring requirements for NO_2 of two monitoring sites per area with a population of 1,000,000 or more in the 2006 monitoring rule revisions (71 FR 61236), based on the fact that there were no NO_2 nonattainment areas at that time, coupled with trends evidence showing an increasing gap between national average NO_2 concentrations and the current annual standard. Additionally, the minimum requirements were removed to provide State, local, and Tribal air monitoring agencies flexibility in meeting higher priority monitoring needs for pollutants such as O_3 and $PM_{2.5}$, or implementing the new multi-pollutant sites (NCore network) required by the 2006 rule revisions, by allowing them to discontinue lower priority monitoring. There are requirements in 40 CFR part 58 Appendix D for NO_2 monitoring as part of the Photochemical Assessment Monitoring Stations (PAMS) network. However, of the approximately 400 NO_2 monitors currently in operation, only about 10 percent may be due to the PAMS requirements.

An analysis of the approximately 400 monitors comprising the current NO_2 monitoring network (Watkins and Thompson, 2008) indicates that the current NO_2 network has largely remained unchanged in terms of size and target monitor objective categories since it was introduced in the May 10, 1979 monitoring rule (44 FR 27571). The review of the current network found that the assessment of concentrations for general population exposure and maximum concentrations at neighborhood and larger scales were the top objectives. A review of the distribution of listed spatial scales of representation shows that only approximately 3 monitors are described as microscale, representing an area on the order of several meters to 100 meters, and approximately 23 monitors are described as middle scale, which represents an area on the order of 100 to 500 meters. This low percentage of smaller spatially representative scale sites within the network of approximately 400 monitoring sites indicates that the majority of monitors have, in fact, been sited to assess area-wide exposures on the neighborhood, urban, and regional scales, as would be expected for a network sited to support the current annual NO_2 standard and PAMS objectives. The current network does not include monitors placed near major roadways and, therefore, monitors in the current network do not necessarily measure the maximum concentrations that can occur on a localized scale near these roadways (as discussed in the next section). It should be noted that the network not only accommodates NAAQS related monitoring but also serves other monitoring objectives, such as support for photochemistry analysis, O_3 modeling and forecasting, and particulate matter precursor tracking.

2. NO_2 Air Quality and Gradients Around Roadways

On-road and non-road mobile sources account for approximately 60% of NO_X emissions (ISA, table 2.2–1) and traffic-related exposures can dominate personal exposures to NO_2 (ISA section 2.5.4). While driving, personal exposure concentrations in the cabin of a vehicle could be substantially higher than ambient concentrations measured nearby (ISA, section 2.5.4). For example, estimates presented in the REA suggest that on/near roadway NO_2 concentrations could be approximately 80% (REA, section 7.3.2) higher on average across locations than concentrations away from roadways and that roadway-associated environments could be responsible for the majority of 1-hour peak NO_2 exposures (REA, Figures 8–17 and 8–18). Because monitors in the current network are not sited to measure peak roadway-associated NO_2 concentrations, individuals who spend time on and/or near major roadways could experience NO_2 concentrations that are considerably higher than indicated by monitors in the current area-wide NO_2 monitoring network.

Research suggests that the concentrations of on-road mobile source pollutants such as NO_X, carbon monoxide (CO), directly emitted air toxics, and certain size distributions of particulate matter (PM), such as ultrafine PM, typically display peak concentrations on or immediately adjacent to roads (ISA, section 2.5). This situation typically produces a gradient in pollutant concentrations, with concentrations decreasing with increasing distance from the road, and concentrations generally decreasing to near area-wide ambient levels, or typical upwind urban background levels, within a few hundred meters downwind. While such a concentration gradient is present on almost all roads, the characteristics of the gradient, including the distance from the road that a mobile source pollutant signature can be differentiated from background concentrations, are heavily dependent on factors such as traffic volumes, local topography, roadside features, meteorology, and photochemical reactivity conditions (Baldauf, *et al.,* 2009; Beckerman *et al.,* 2008; Clements *et al.,* 2008; Hagler *et al.,* 2009; Janssen *et al.,* 2001; Rodes and Holland, 1981; Roorda-Knape *et al.,* 1998; Singer *et al.,* 2004; Zhou and Levy, 2007).

Because NO_2 in the ambient air is due largely to the atmospheric oxidation of NO emitted from combustion sources (ISA, section 2.2.1), elevated NO_2 concentrations can extend farther away from roadways than the primary pollutants also emitted by on-road mobile sources. More specifically, review of the technical literature suggests that NO_2 concentrations may return to area-wide or typical urban background concentrations within distances up to 500 meters of roads, though the actual distance will vary with topography, roadside features, meteorology, and photochemical reactivity conditions (Baldauf *et al.,* 2009; Beckerman *et al.,* 2008; Clements *et al.,* 2008; Gilbert *et al.* 2003; Rodes and Holland, 1981; Singer *et al.,* 2004; Zhou and Levy, 2007). Efforts to quantify the extent and slope of the concentration gradient that may exist from peak near-road concentrations to the typical urban background concentrations must consider the variability that exists across locations and for a given location over time. As a result, we have identified a range of concentration gradients in the technical literature which indicate that, on average, peak NO_2 concentrations on or immediately adjacent to roads may typically be between 30 and 100 percent greater than concentrations monitored in the same area but farther away from the road (ISA, Section 2.5.4; Beckerman *et al.,* 2008; Gilbert *et al.,* 2003; Rodes and Holland, 1981; Roorda-Knape *et al.,* 1998; Singer *et al.,* 2004). This range of concentration gradients has implications for revising the NO_2 primary standard and for the NO_2 monitoring network (discussed in sections II.F.4 and III).

B. Health Effects Information

In the last review of the NO_2 NAAQS, the 1993 NO_X Air Quality Criteria Document (1993 AQCD) (EPA, 1993) concluded that there were two key health effects of greatest concern at ambient or near-ambient concentrations of NO_2 (ISA, section 5.3.1). The first was increased airway responsiveness in asthmatic individuals after short-term exposures. The second was increased respiratory illness among children associated with longer-term exposures to NO_2. Evidence also was found for increased risk of emphysema, but this appeared to be of major concern only with exposures to NO_2 at levels much higher than then current ambient levels (ISA, section 5.3.1). Controlled human

exposure and animal toxicological studies provided qualitative evidence for airway hyperresponsiveness and lung function changes while epidemiologic studies provided evidence for increased respiratory symptoms with increased indoor NO_2 exposures. Animal toxicological findings of lung host defense system changes with NO_2 exposure provided a biologically-plausible basis for the epidemiologic results. Subpopulations considered potentially more susceptible to the effects of NO_2 exposure included persons with preexisting respiratory disease, children, and the elderly. The epidemiologic evidence for respiratory health effects was limited, and no studies had considered endpoints such as hospital admissions, emergency department visits, or mortality (ISA, section 5.3.1).

As summarized below and discussed more fully in section II.B of the proposal notice, evidence published since the last review generally has confirmed and extended the conclusions articulated in the 1993 AQCD (ISA, section 5.3.2). The epidemiologic evidence has grown substantially with the addition of field and panel studies, intervention studies, time-series studies of endpoints such as hospital admissions, and a substantial number of studies evaluating mortality risk associated with short-term NO_2 exposures. While not as marked as the growth in the epidemiologic literature, a number of recent toxicological and controlled human exposure studies also provide insights into relationships between NO_2 exposure and health effects. This body of evidence focuses the current review on NO_2-related respiratory effects at lower ambient and exposure concentrations than considered in the previous review.

1. Adverse Respiratory Effects and Short-Term Exposure to NO_2

The ISA concluded that the findings of epidemiologic, controlled human exposure, and animal toxicological studies provide evidence that is sufficient to infer a likely causal relationship for respiratory effects following short-term NO_2 exposure (ISA, sections 3.1.7 and 5.3.2.1). The ISA (section 5.4) concluded that the strongest evidence for an association between NO_2 exposure and adverse human health effects comes from epidemiologic studies of respiratory symptoms, emergency department visits, and hospital admissions. These studies include panel and field studies, studies that control for the effects of co-occurring pollutants, and studies conducted in areas where the whole distribution of ambient 24-hour average NO_2 concentrations was below the current NAAQS level of 53 ppb (annual average). With regard to this evidence, the ISA concluded that NO_2 epidemiologic studies provide "little evidence of any effect threshold" (ISA, section 5.3.2.9, p. 5–15). In studies that have evaluated concentration-response relationships, they appear linear within the observed range of data (ISA, section 5.3.2.9).

Overall, the epidemiologic evidence for respiratory effects has been characterized in the ISA as consistent, in that associations are reported in studies conducted in numerous locations with a variety of methodological approaches, and coherent, in that the studies report associations with respiratory health outcomes that are logically linked together. In addition, a number of these associations are statistically significant, particularly the more precise effect estimates (ISA, section 5.3.2.1). These epidemiologic studies are supported by evidence from toxicological and controlled human exposure studies, particularly those that evaluated airway hyperresponsiveness in asthmatic individuals (ISA, section 5.4). The ISA concluded that together, the epidemiologic and experimental data sets form a plausible, consistent, and coherent description of a relationship between NO_2 exposures and an array of adverse respiratory health effects that range from the onset of respiratory symptoms to hospital admissions.

In considering the uncertainties associated with the epidemiologic evidence, the ISA (section 5.4) noted that it is difficult to determine "the extent to which NO_2 is independently associated with respiratory effects or if NO_2 is a marker for the effects of another traffic-related pollutant or mix of pollutants." On-road vehicle exhaust emissions are a widespread source of combustion pollutant mixtures that include NO_X and are an important contributor to NO_2 levels in near-road locations. Although the presence of other pollutants from vehicle exhaust emissions complicates efforts to quantify specific NO_2-related health effects, a number of epidemiologic studies have evaluated associations with NO_2 in models that also include co-occurring pollutants such as PM, O_3, CO, and/or SO_2. The evidence summarized in the ISA indicates that NO_2 associations generally remain robust in these multi-pollutant models and supports a direct effect of short-term NO_2 exposure on respiratory morbidity (*see* ISA Figures 3.1–7, 3.1–10, 3.1–11). The plausibility and coherence of these effects are also supported by epidemiologic studies of indoor NO_2 as well as experimental (*i.e.,* toxicological and controlled human exposure) studies that have evaluated host defense and immune system changes, airway inflammation, and airway responsiveness (*see* subsequent sections of this proposal and the ISA, section 5.3.2.1). The ISA (section 5.4) concluded that the robustness of epidemiologic findings to adjustment for co-pollutants, coupled with data from animal and human experimental studies, support a determination that the relationship between NO_2 and respiratory morbidity is likely causal, while still recognizing the relationship between NO_2 and other traffic related pollutants.

The epidemiologic and experimental studies encompass a number of respiratory-related health endpoints, including emergency department visits and hospitalizations, respiratory symptoms, airway hyperresponsiveness, airway inflammation, and lung function. The findings relevant to these endpoints, which provide the rationale to support the judgment of a likely causal relationship, are described in more detail in section II.B.1 of the proposal.

2. Other Effects With Short-Term Exposure to NO_2

a. Mortality

The ISA concluded that the epidemiologic evidence is suggestive, but not sufficient, to infer a causal relationship between short-term exposure to NO_2 and all-cause and cardiopulmonary-related mortality (ISA, section 5.3.2.3). Results from several large United States and European multicity studies and a meta-analysis study indicate positive associations between ambient NO_2 concentrations and the risk of all-cause (nonaccidental) mortality, with effect estimates ranging from 0.5 to 3.6% excess risk in mortality per standardized increment (20 ppb for 24-hour averaging time, 30 ppb for 1-hour averaging time) (ISA, section 3.3.1, Figure 3.3–2, section 5.3.2.3). In general, the ISA concluded that NO_2 effect estimates were robust to adjustment for co-pollutants. Both cardiovascular and respiratory mortality have been associated with increased NO_2 concentrations in epidemiologic studies (ISA, Figure 3.3–3); however, similar associations were observed for other pollutants, including PM and SO_2. The range of risk estimates for excess mortality is generally smaller than that for other pollutants such as PM. In addition, while NO_2 exposure, alone or in conjunction with other pollutants,

may contribute to increased mortality, evaluation of the specificity of this effect is difficult. Clinical studies showing hematologic effects and animal toxicological studies showing biochemical, lung host defense, permeability, and inflammation changes with short-term exposures to NO_2 provide limited evidence of plausible pathways by which risks of mortality may be increased, but no coherent picture is evident at this time (ISA, section 5.3.2.3).

b. Cardiovascular Effects

The ISA concluded that the available evidence on cardiovascular health effects following short-term exposure to NO_2 is inadequate to infer the presence or absence of a causal relationship at this time (ISA, section 5.3.2.2). Evidence from epidemiologic studies of heart rate variability, repolarization changes, and cardiac rhythm disorders among heart patients with ischemic cardiac disease are inconsistent (ISA, section 5.3.2.2). In most studies, associations with PM were found to be similar or stronger than associations with NO_2. Generally positive associations between ambient NO_2 concentrations and hospital admissions or emergency department visits for cardiovascular disease have been reported in single-pollutant models (ISA, section 5.3.2.2); however, most of these effect estimate values were diminished in multi-pollutant models that also contained CO and PM indices (ISA, section 5.3.2.2). Mechanistic evidence of a role for NO_2 in the development of cardiovascular diseases from studies of biomarkers of inflammation, cell adhesion, coagulation, and thrombosis is lacking (ISA, section 5.3.2.2). Furthermore, the effects of NO_2 on various hematological parameters in animals are inconsistent and, thus, provide little biological plausibility for effects of NO_2 on the cardiovascular system (ISA, section 5.3.2.2).

3. Health Effects With Long-Term Exposure to NO_2

a. Respiratory Morbidity

The ISA concluded that overall, the epidemiologic and experimental evidence is suggestive, but not sufficient, to infer a causal relationship between long-term NO_2 exposure and respiratory morbidity (ISA, section 5.3.2.4). The available database evaluating the relationship between respiratory illness in children and long-term exposures to NO_2 has increased since the 1996 review of the NO_2 NAAQS (*see* section II.B.3 of the proposal for a more detailed discussion). A number of epidemiologic studies have examined the effects of long-term exposure to NO_2 and reported positive associations with decrements in lung function and partially irreversible decrements in lung function growth (ISA, section 3.4.1, Figures 3.4–1 and 3.4–2). While animal toxicological studies may provide biological plausibility for the chronic effects of NO_2 that have been observed in epidemiologic studies (ISA, sections 3.4.5 and 5.3.2.4), the high correlation among traffic-related pollutants in epidemiologic studies makes it difficult to accurately estimate independent effects (ISA, section 5.3.2.4).

b. Mortality

The ISA concluded that the epidemiologic evidence is inadequate to infer the presence or absence of a causal relationship between long-term exposure to NO_2 and mortality (ISA, section 5.3.2.6). In the United States and European cohort studies examining the relationship between long-term exposure to NO_2 and mortality, results have been inconsistent (ISA, section 5.3.2.6). Further, when associations were suggested, they were not specific to NO_2 but also implicated PM and other traffic indicators. The relatively high correlations reported between NO_2 and PM indices make it difficult to interpret these observed associations at this time (ISA, section 5.3.2.6).

c. Carcinogenic, cardiovascular, and reproductive/developmental effects

The ISA concluded that the available epidemiologic and toxicological evidence is inadequate to infer the presence or absence of a causal relationship for carcinogenic, cardiovascular, and reproductive and developmental effects related to long-term NO_2 exposure (ISA, section 5.3.2.5). Epidemiologic studies conducted in Europe have shown an association between long-term NO_2 exposure and increased incidence of cancer (ISA, section 5.3.2.5). However, the animal toxicological studies have provided no clear evidence that NO_2 acts as a carcinogen (ISA, section 5.3.2.5). The very limited epidemiologic and toxicological evidence do not suggest that long-term exposure to NO_2 has cardiovascular effects (ISA, section 5.3.2.5). The epidemiologic evidence is not consistent for associations between NO_2 exposure and fetal growth retardation; however, some evidence is accumulating for effects on preterm delivery (ISA, section 5.3.2.5). Scant animal evidence supports a weak association between NO_2 exposure and adverse birth outcomes and provides little mechanistic information or biological plausibility for the epidemiologic findings.

4. NO_2-related Impacts on Public Health

Specific groups within the general population are likely at increased risk for suffering adverse effects from NO_2 exposure. This could occur because they are affected by lower levels of NO_2 than the general population or because they experience a larger health impact than the general population to a given level of exposure (susceptibility) and/or because they are exposed to higher levels of NO_2 than the general population (vulnerability). The term susceptibility generally encompasses innate (*e.g.,* genetic or developmental) and/or acquired (*e.g.,* age or disease) factors that make individuals more likely to experience effects with exposure to pollutants. The severity of health effects experienced by a susceptible subgroup may be much greater than that experienced by the population at large. Factors that may influence susceptibility to the effects of air pollution include age (*e.g.,* infants, children, elderly); gender; race/ethnicity; genetic factors; and pre-existing disease/condition (*e.g.,* obesity, diabetes, respiratory disease, asthma, chronic obstructive pulmonary disease (COPD), cardiovascular disease, airway hyperresponsiveness, respiratory infection, adverse birth outcome) (ISA, sections 4.3.1, 4.3.5, and 5.3.2.8). In addition, certain groups may experience relatively high exposure to NO_2, thus forming a potentially vulnerable population (ISA, section 4.3.6). Factors that may influence susceptibility and vulnerability to air pollution include socioeconomic status (SES), education level, air conditioning use, proximity to roadways, geographic location, level of physical activity, and work environment (*e.g.,* indoor versus outdoor) (ISA, section 4.3.5). The ISA discussed factors that can confer susceptibility and/or vulnerability to air pollution with most of the discussion devoted to factors for which NO_2-specific evidence exists (ISA, section 4.3). These factors include pre-existing disease (*e.g.,* asthma), age (*i.e.,* infants, children, older adults), genetic factors, gender, socioeconomic status, and proximity to roadways (*see* section II.B.4 in proposal for more detailed discussion of these factors).

As discussed in more detail in the proposal (section II.B.4), the population potentially affected by NO_2 is large. A considerable fraction of the population resides, works, or attends school near major roadways, and these individuals are likely to have increased exposure to NO_2 (ISA, section 4.4). Based on data

from the 2003 American Housing Survey, approximately 36 million individuals live within 300 feet (~90 meters) of a four-lane highway, railroad, or airport (ISA, section 4.4).[7] Furthermore, in California, 2.3% of schools, with a total enrollment of more than 150,000 students were located within approximately 500 feet of high-traffic roads, with a higher proportion of non-white and economically disadvantaged students attending those schools (ISA, section 4.4). Of this population, asthmatics and members of other susceptible groups discussed above will have even greater risks of experiencing health effects related to NO_2 exposure. In the United States, approximately 10% of adults and 13% of children (approximately 22.2 million people in 2005) have been diagnosed with asthma, and 6% of adults have been diagnosed with COPD (ISA, section 4.4). The prevalence and severity of asthma is higher among certain ethnic or racial groups such as Puerto Ricans, American Indians, Alaskan Natives, and African Americans (ISA, section 4.4). A higher prevalence of asthma among persons of lower SES and an excess burden of asthma hospitalizations and mortality in minority and inner-city communities have been observed (ISA, section 4.4). In addition, based on United States census data from 2000, about 72.3 million (26%) of the United States population are under 18 years of age, 18.3 million (7.4%) are under 5 years of age, and 35 million (12%) are 65 years of age or older. Therefore, large portions of the United States population are in age groups that are likely at-risk for health effects associated with exposure to ambient NO_2. The size of the potentially at-risk population suggests that exposure to ambient NO_2 could have a significant impact on public health in the United States.

C. Human Exposure and Health Risk Characterization

To put judgments about NO_2-associated health effects into a broader public health context, EPA has drawn upon the results of the quantitative exposure and risk assessments. Judgments reflecting the nature of the evidence and the overall weight of the evidence are taken into consideration in these quantitative exposure and risk assessments, discussed below. These assessments provide estimates of the likelihood that asthmatic individuals would experience exposures of potential concern and estimates of the incidence of NO_2-associated respiratory emergency department visits under varying air quality scenarios (*e.g.,* just meeting the current or alternative standards), as well as characterizations of the kind and degree of uncertainties inherent in such estimates. As discussed more fully in section II.C of the proposal, this section summarizes the approach taken in the REA to characterize NO_2-related exposures and health risks. Goals of the REA included estimating short-term exposures and potential human health risks associated with (1) recent levels of ambient NO_2; (2) NO_2 levels adjusted to simulate just meeting the current standard; and (3) NO_2 levels adjusted to simulate just meeting potential alternative standards.

For purposes of the quantitative characterization of NO_2 health risks, the REA determined that it was appropriate to focus on endpoints for which the ISA concluded that the available evidence is sufficient to infer either a causal or a likely causal relationship. This was generally consistent with judgments made in other recent NAAQS reviews (*e.g., see* EPA, 2005). As noted above in section II.A, the only health effect category for which the evidence was judged in the ISA to be sufficient to infer either a causal or a likely causal relationship is respiratory morbidity following short-term NO_2 exposure. Therefore, for purposes of characterizing health risks associated with NO_2, the REA focused on respiratory morbidity endpoints that have been associated with short-term NO_2 exposures.

In evaluating the appropriateness of specific endpoints for use in the NO_2 risk characterization, the REA considered both epidemiologic and controlled human exposure studies. As described in more detail in the proposal (section II.C.1), the characterization of NO_2-associated health risks was based on an epidemiology study conducted in Atlanta, Georgia by Tolbert *et al.* (2007) and a meta-analysis of controlled human exposure studies of NO_2 and airway responsiveness in asthmatics (ISA, Table 3.1–3).[8]

As noted above, the purpose of the assessments described in the REA was to characterize air quality, exposures, and health risks associated with recent ambient levels of NO_2, with NO_2 levels that could be associated with just meeting the current NO_2 NAAQS, and with NO_2 levels that could be associated with just meeting potential alternative standards. To characterize health risks, the REA employed three approaches. In the first approach, for each air quality scenario, NO_2 concentrations at fixed-site monitors and simulated concentrations on/near roadways were compared to potential health effect benchmark values derived from the controlled human exposure literature. In the second approach, modeled estimates of exposures in asthmatics were compared to potential health effect benchmarks. In the third approach, concentration-response relationships from an epidemiologic study were used in conjunction with baseline incidence data and recent or simulated ambient concentrations to estimate health impacts. An overview of the approaches to characterizing health risks is provided in the proposal (section II.C.2) and each approach, along with its limitations and uncertainties (*see* proposal, section II.C.3) has been described in more detail in the REA (chapters 6 through 9).

Chapters 7–9 of the REA estimated exposures and health risks associated with recent air quality and with air quality, as measured at monitors in the current area-wide network, which had been adjusted to simulate just meeting the current and potential alternative standards. The specific standard levels evaluated, for an area-wide standard based on the 3-year average of the 98th and 99th percentile 1-hour daily maximum NO_2 concentrations, were 50, 100, 150, and 200 ppb. In interpreting these results within the context of the current revisions to the NO_2 primary NAAQS (*see* below), we note that simulation of different standard levels was based on adjusting NO_2 concentrations at available area-wide monitors. Therefore, the standard levels referred to above reflect the allowable area-wide NO_2 concentrations, not the maximum allowable concentrations. As a consequence, the maximum concentrations in an area that just meets one of these standard levels would be expected to be higher than the standard level. For example, given that near-road

[7] The most current American Housing Survey (*http://www.census.gov/hhes/www/housing/ahs/ahs.html*) is from 2007 and lists a higher fraction of housing units within the 300 foot boundary than do prior surveys. According to Table 1A–6 from that report (*http://www.census.gov/hhes/www/housing/ahs/ahs07/tab1a-6.pdf*), out of 128,203,000 total housing units in the United States, 20,016,000 were reported by the surveyed occupant or landlord as being within 300 feet of a 4-or-more lane highway, railroad, or airport. That constitutes 15.613% of the total housing units in the U.S. Assuming equal distributions, with a current population of 306,330,199, that means that there would be 47.8 million people meeting the 300 foot criteria.

[8] The study by Tolbert *et al.* (2007) reported positive associations between 1-hour ambient NO_2 concentrations and respiratory-related emergency department visits. The meta-analysis was included in the ISA and reported that short-term exposures to NO_2 concentrations at or above 100 ppb increased airway responsiveness in most asthmatics.

NO_2 concentrations can be 30% to 100% higher than area-wide concentrations (*see* section II.E.2), an area-wide concentration of 50 ppb could correspond to near-road concentrations from 65 to 100 ppb.

Key results of the air quality, exposure, and risk analyses were presented in the policy assessment chapter of the REA and summarized in the proposal (Table 1 in proposal). In considering these results, the policy assessment chapter of the REA concluded that the risks estimated to be associated with just meeting the current annual standard can be judged important from a public health perspective. The results for specific 1-hour standard levels estimate that limiting the 98th/99th percentile of the distribution of 1-hour daily maximum NO_2 concentrations measured at area-wide monitors to 50 or 100 ppb could substantially reduce exposures to ambient NO_2 and associated health risks (compared to just meeting the current standard). In contrast, limiting these area-wide NO_2 concentrations to 150 or 200 ppb is estimated to result in similar, or in some cases higher, NO_2-associated exposures and health risks than just meeting the current standard. The pattern of results was similar for standards just meeting either the 98th or the 99th percentile 1-hour daily maximum area-wide standards (REA, Chapters 7, 8, and 9).

D. Approach for Reviewing the Need To Retain or Revise the Current Standard

EPA notes that the final decision on retaining or revising the current primary NO_2 standard is a public health policy judgment to be made by the Administrator. This judgment has been informed by a recognition that the available health effects evidence reflects a continuum consisting of ambient levels of NO_2 at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain. The Administrator's final decisions draw upon scientific information and analyses related to health effects, population exposures, and risks; judgments about the appropriate response to the range of uncertainties that are inherent in the scientific evidence and analyses; and comments received from CASAC and the public.

To evaluate whether the current primary NO_2 standard is requisite or whether consideration of revisions is appropriate, EPA has used an approach in this review that was described in the policy assessment chapter of the REA. This approach builds upon those used in reviews of other criteria pollutants, including the most recent reviews of the Pb, O_3, and PM NAAQS (EPA, 2007c; EPA, 2007d; EPA, 2005), and reflects the body of evidence and information that is currently available. As in other recent reviews, EPA's considerations included the implications of placing more or less weight or emphasis on different aspects of the scientific evidence and the exposure/risk-based information, recognizing that the weight to be given to various elements of the evidence and exposure/risk information is part of the public health policy judgments that the Administrator will make in reaching decisions on the standard.

A series of general questions framed this approach to considering the scientific evidence and exposure-/risk-based information. First, EPA's consideration of the scientific evidence and exposure/risk information with regard to the adequacy of the current standard has been framed by the following questions:

- To what extent does evidence that has become available since the last review reinforce or call into question evidence for NO_2-associated effects that were identified in the last review?
- To what extent has evidence for different health effects and/or sensitive populations become available since the last review?
- To what extent have uncertainties identified in the last review been reduced and/or have new uncertainties emerged?
- To what extent does evidence and exposure-/risk-based information that has become available since the last review reinforce or call into question any of the basic elements of the current standard?

To the extent that the available evidence and exposure-/risk-based information suggests it may be appropriate to consider revision of the current standard, EPA considers that evidence and information with regard to its support for consideration of a standard that is either more or less protective than the current standard. This evaluation has been framed by the following questions:

- Is there evidence that associations, especially causal or likely causal associations, extend to ambient NO_2 concentrations as low as, or lower than, the concentrations that have previously been associated with health effects? If so, what are the important uncertainties associated with that evidence?
- Are exposures above benchmark levels and/or health risks estimated to occur in areas that meet the current standard? If so, are the estimated exposures and health risks important from a public health perspective? What are the important uncertainties associated with the estimated risks?

To the extent that there is support for consideration of a revised standard, EPA then considers the specific elements of the standard (indicator, averaging time, form, and level) within the context of the currently available information. In so doing, the Agency has addressed the following questions:

- Does the evidence provide support for considering a different indicator for gaseous NO_X?
- Does the evidence provide support for considering different averaging times?
- What ranges of levels and forms of alternative standards are supported by the evidence, and what are the associated uncertainties and limitations?
- To what extent do specific averaging times, levels, and forms of alternative standards reduce the estimated exposures above benchmark levels and risks attributable to NO_2, and what are the uncertainties associated with the estimated exposure and risk reductions?

The questions outlined above have been addressed in the REA, the proposal, and in this final rulemaking. The following sections present the rationale for proposed decisions, discussion of public comments, and the Administrator's conclusions on the adequacy of the current standard and potential alternative standards in terms of indicator, averaging time, form, and level.

E. Adequacy of the Current Standard

This section discusses considerations related to the decision as to whether the current NO_2 primary NAAQS is requisite to protect public health with an adequate margin of safety. Specifically, section II.E.1 provides an overview of the rationale supporting the Administrator's conclusion in the proposal that the current standard alone does not provide adequate public health protection; section II.E.2 discusses comments received on the adequacy of the current standard; and section II.E.3 discusses the Administrator's final decision on whether the current NO_2 primary NAAQS is requisite to protect public health with an adequate margin of safety.

1. Rationale for Proposed Decision

In reaching a conclusion regarding the adequacy of the current NO_2 NAAQS in the proposal (section II.E.5), the Administrator considered the scientific evidence assessed in the ISA and the conclusions of the ISA, the exposure and risk information presented in the REA and the conclusions of the policy assessment chapter of the REA, and the views expressed by CASAC. These considerations are discussed in detail in the proposal (II.E.) and are summarized in this section. In the proposal, the

Administrator noted the following in considering the adequacy of the current standard:

- The ISA concluded that the results of epidemiologic and experimental studies form a plausible and coherent data set that supports a relationship between NO_2 exposures and respiratory endpoints, including respiratory symptoms and respiratory-related hospital admissions and emergency department visits, at ambient concentrations that are present in areas that meet the current NO_2 NAAQS (ISA, section 5.4).
- The policy assessment chapter of the REA concluded that risks estimated to be associated with air quality adjusted upward to simulate just meeting the current standard can reasonably be judged important from a public health perspective (REA, section 10.3.3).
- The policy assessment chapter of the REA concluded that exposure- and risk-based results reinforce the scientific evidence in supporting the conclusion that consideration should be given to revising the current NO_2 NAAQS so as to provide increased public health protection, especially for at-risk groups, from NO_2-related adverse health effects associated with short-term, and potential long-term, exposures (REA, section 10.3.3).
- CASAC agreed that the current annual standard alone is not sufficient to protect public health against the types of exposures that could lead to these health effects. Specifically, in their letter to the Administrator on the final REA, they stated that "CASAC concurs with EPA's judgment that the current NAAQS does not protect the public's health and that it should be revised" (Samet, 2008b).

Based on these considerations (discussed in more detail in the proposal, section II.E), the Administrator concluded in the proposal that the current NO_2 primary NAAQS is not requisite to protect public health with an adequate margin of safety against adverse respiratory effects associated with short-term exposures. In considering approaches to revising the current standard, the Administrator concluded that it is appropriate to consider setting a new short-term standard in addition to retaining the current annual standard. The Administrator noted that such a short-term standard could provide increased public health protection, especially for members of at-risk groups, from effects described in both epidemiologic and controlled human exposure studies to be associated with short-term exposures to NO_2.

2. Comments on the Adequacy of the Current Standard

This section discusses comments received from CASAC and public commenters on the proposal that either supported or opposed the Administrator's proposed decision to revise the current NO_2 primary NAAQS. Comments on the adequacy of the current standard that focused on the scientific and/or the exposure/risk basis for the Administrator's proposed conclusions are discussed in sections II.E.2.a-II.E.2.c. Comments on the epidemiologic evidence are considered in section II.E.2.a. Comments on the controlled human exposure evidence are considered in section II.E.2.b. Comments on human exposure and health risk assessments are considered in section II.E.2.c. To the extent these comments on the evidence and information are also used to justify commenters' conclusions on decisions related to indicator, averaging time, level, or form, they are noted in the appropriate sections below (II.F.1–II.F.4).

In their comments on the proposal (Samet, 2009), CASAC reiterated their support for the need to revise the current annual NO_2 NAAQS in order to increase public health protection. As noted above, in its letter to the Administrator on the final REA (Samet, 2008b) CASAC stated that it "concurs with EPA's judgment that the current NAAQS does not protect the public's health and that it should be revised." In supporting adoption of a more stringent NAAQS for NO_2, CASAC considered the assessment of the scientific evidence presented in the ISA, the results of assessments presented in the REA, and the conclusions of the policy assessment chapter of the REA. As such, CASAC's rationale for revising the current standard was consistent with the Administrator's rationale as discussed in the proposal.

Many public commenters agreed with CASAC that, based on the available information, the current NO_2 standard is not requisite to protect public health with an adequate margin of safety and that revisions to the standard are appropriate. Among those calling for revisions to the standard were environmental groups (*e.g.,* Clean Air Council (CAC), Earth Justice (EJ), Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC), Group Against Smog and Pollution (GASP)); medical/public health organizations (*e.g.,* American Lung Association (ALA), American Medical Association (AMA), American Thoracic Society (ATS), National Association for the Medical Direction of Respiratory Care (NAMDRC), National Association of Cardiovascular and Pulmonary Rehabilitation (NACPR), American College of Chest Physicians (ACCP)); a large number of State agencies and organizations (*e.g.,* National Association of Clean Air Agencies (NACAA), Northeast States for Coordinated Air Use Management (NESCAUM), and State or local agencies in CA, IA, IL, MI, MO, NC, NM, NY, TX, VA, WI); Tribes (*e.g.,* National Tribal Air Association (NTAA), Fond du Lac Band of Lake Superior Chippewa (Fond du Lac)), and a number of individual commenters. These commenters concluded that the current NO_2 standard needs to be revised and that a more stringent standard is needed to protect the health of sensitive population groups. In supporting the need to adopt a more stringent NAAQS for NO_2, these commenters often referenced the conclusions of CASAC and relied on the evidence and information presented in the proposal. As such, similar to CASAC, the rationale offered by these commenters was consistent with that presented in the proposal to support the Administrator's proposed decision to revise the current NO_2 NAAQS.

Some industry commenters (*e.g.,* Alliance of Automobile Manufacturers (AAM), American Petroleum Institute (API), Interstate Natural Gas Association of America (INGAA), Utility Air Regulatory Group (UARG)) and one State commenter (IN Department of Environmental Management) expressed support for retaining the current annual standard alone. In supporting this view, these commenters generally concluded that the current standard is requisite to protect public health with an adequate margin of safety and that the available evidence is not sufficient to support revision of the standard. For example, UARG stated that "EPA has failed to demonstrate that the present NO_2 NAAQS is no longer at the level requisite to protect public health with an adequate margin of safety." In addition, INGAA stated that

"* * * EPA should be compelled to retain the current standard and defer a decision on a new short-term standard until the science is more clearly defined."

In support of their views, these commenters provided specific comments on the epidemiologic and controlled human exposure evidence as discussed below. In responding to these specific comments, we note that the Administrator relied in the proposal on the evidence, information and judgments contained in the ISA and the

REA (including the policy assessment chapter) as well as on the advice of CASAC. In considering the evidence, information, and judgments of the ISA and the REA, the Agency notes that these documents have been reviewed extensively by CASAC and have been discussed by CASAC at multiple public meetings (*see* section I.D). In their letter to the Administrator regarding the second draft ISA (Henderson, 2008), CASAC noted the following:

> Panel members concur with the primary conclusions reached in the ISA with regard to health risks that are associated with NO_2 exposure. In particular, the Panel agrees with the conclusion that the current scientific evidence is "sufficient to infer a likely causal relationship between short-term NO_2 exposure and adverse effects on the respiratory system." The strongest evidence in support of this conclusion comes from epidemiology studies that show generally positive associations between NO_2 and respiratory symptoms, hospitalizations or emergency department visits, as summarized in Figure 5.3.1."

Similarly, in their letter to the Administrator on the final REA (Samet, 2008b), CASAC noted the following:

> Overall, CASAC found this version of the REA satisfactory in its approach to moving from the scientific foundation developed in the Integrated Science Assessment (ISA) to setting out evidence-based options for the NAAQS. The REA provides the needed bridge from the evidence presented in the ISA to a characterization of the exposures and the associated risks with different profiles of exposure. It draws on toxicological and epidemiological evidence and addresses risk to an identified susceptible population, people with asthmatic conditions. EPA has also systematically described uncertainties associated with the risk assessments. We commend EPA for developing a succinct and thoughtfully developed synthesis in chapter 10. This summary chapter represents a long-needed and transparent model for linking a substantial body of scientific evidence to the four elements of the NAAQS.

Therefore, in discussing comments on the interpretation of the scientific evidence and exposure/risk information, we note that CASAC has endorsed the approaches and conclusions of the ISA and the REA. These approaches and conclusions are discussed below in more detail, within the context of specific public comments.

a. Comments on EPA's Interpretation of the Epidemiologic Evidence

Several industry groups (*e.g.,* API, National Mining Association (NMA), American Chemistry Council (ACC), AAM, Annapolis Center for Science-Based Public Policy (ACSBPP), Engine Manufacturers Association (EMA), ExxonMobil (Exxon), National Association of Manufacturers (NAM)) commented that, given the presence of numerous co-pollutants in the air, epidemiologic studies do not support the contention that NO_2 itself is causing health effects.

While EPA has recognized that multiple factors can contribute to the etiology of respiratory disease and that more than one air pollutant could independently impact respiratory health, we continue to judge, as discussed in the ISA, that the available evidence supports the conclusion that there is an independent effect of NO_2 on respiratory morbidity. In reaching this judgment, we recognize that a major methodological issue affecting NO_2 epidemiologic studies concerns the evaluation of the extent to which other air pollutants may confound or modify NO_2-related effect estimates. The use of multipollutant regression models is the most common approach for controlling potential confounding by co-pollutants in epidemiologic studies. The issues related to confounding and the evidence of potential confounding by co-pollutants has been thoroughly reviewed in the ISA (*see* Figures 3.1–10 and 3.1–11) and in previous assessments (*e.g.,* the criteria document for PM) (EPA, 2004). NO_2 risk estimates for respiratory morbidity endpoints, in general, were not sensitive to the inclusion of co-pollutants, including particulate and gaseous pollutants. As observed in Figures 3.1–10 and 3.1–11 in the ISA, relative risks for hospital admissions or emergency department visits are generally unchanged, nor is their interpretation modified, upon inclusion of PM or gaseous co-pollutants in the models. Similarly, associations between short-term NO_2 exposure and asthma symptoms are generally robust to adjustment for co-pollutants in multipollutant models, as shown in Figures 3.1–5 and 3.1–7 of the ISA. These results, in conjunction with the results of a randomized intervention study evaluating respiratory effects of indoor exposure to NO_2 (ISA, section 3.1.4.1), led to the conclusion that the effect of NO_2 on respiratory health outcomes is robust and independent of the effects of other ambient co-pollutants.

In addition, experimental studies conducted in animals and humans provide support for the plausibility of the associations reported in epidemiologic studies. These controlled human exposure and animal toxicological studies have reported effects of NO_2 on immune system function, lung host defense, airway inflammation, and airway responsiveness (ISA, section 5.4). These experimental study results support an independent contribution of NO_2 to the respiratory health effects reported in epidemiologic studies (ISA Section 5.4).

In considering the entire body of evidence, including epidemiologic and experimental studies, the ISA (section 5.4, p. 5–16) concluded the following:

> Although this [presence of co-pollutants] complicates the efforts to disentangle specific NO_2-related health effects, the evidence summarized in this assessment indicates that NO_2 associations generally remain robust in multi-pollutant models and supports a direct effect of short-term NO_2 exposure on respiratory morbidity at ambient concentrations below the current NAAQS. The robustness of epidemiologic findings to adjustment for co-pollutants, coupled with data from animal and human experimental studies, support a determination that the relationship between NO_2 and respiratory morbidity is likely causal, while still recognizing the relationship between NO_2 and other traffic-related pollutants.

Comments on specific epidemiologic studies are discussed below.

The National Association of Manufacturers (NAM) commented that the final REA relied on an epidemiologic study (Delfino *et al.* 2002) not critically reviewed in the final ISA. Contrary to NAM's contention, the study by Delfino *et al.* (2002) was critically reviewed by EPA staff and pertinent information was extracted from the study. The respiratory health effects of NO_2 on asthma reported in this study are included in Figure 5.3–1, Table 5.4–1, and Annex Table AX6.3–2 of the ISA. While NAM comments on the narrative discussion of this study in the final ISA, their contention that EPA scientists did not critically analyze the study while preparing the final ISA is incorrect. The inclusion of the study in the figures and tables in this ISA, as well as inclusion in the 2004 PM AQCD, indicate critical analysis of the study that was implemented throughout the review process. The narrative discussion in the ISA focused on multicity studies (specifically those by Schwartz *et al.* 1994, Mortimer *et al.* 2002 and Schildcrout *et al.* 2006), which provide substantial epidemiologic evidence for the respiratory health effects of NO_2 on asthma among children.

Additional comments from NAM contend that EPA's interpretation of three individual epidemiologic studies (*e.g.* Krewski *et al.* 2000; Schildcrout *et al.* 2006; Mortimer *et al.* 2002) is inconsistent across different NAAQS reviews. The NAM comments on all three studies are discussed below.

NAM stated the following regarding the study by Krewski *et al:*

> In the Final ISA, EPA cites the Krewski, *et al.* (2000) study as evidence of a significant

association between NO_2 exposure and mortality. Although EPA acknowledges that exposure to NO_2 was "highly correlated" with other pollutants, including $PM_{2.5}$ and SO_2, EPA does not consider the analysis of the respective contributions of single pollutants in the same study that EPA included in its prior Staff Paper for Particulate Matter. In that document, EPA stated: "In single-pollutant models, none of the gaseous co-pollutants was significantly associated with mortality except SO_2." If EPA has not altered its scientific views concerning this study as expressed in the PM Staff Paper, it is entirely inappropriate for EPA to suggest that the Krewski, *et al.* (2000) study provides any evidence of an association between NO_2 exposure and mortality.

In these comments, NAM fails to recognize that the report from Krewski *et al.* (2000) contains a reanalysis of two cohort studies, the Harvard Six Cities and the American Cancer Society (ACS) studies. The characterization in the NO_X ISA of the study by Krewski *et al.* (2000), referenced by NAM in their comments, refers to the reanalysis of the Harvard Six Cities Study. As stated in the NO_X ISA (p. 3–74):

Krewski *et al.* (2000) conducted a sensitivity analysis of the Harvard Six Cities study and examined associations between gaseous pollutants (*i.e.,* O_3, NO_2, SO_2, CO) and mortality. NO_2 showed risk estimates similar to those for $PM_{2.5}$ per "low to high" range increment with total (1.15 [95% CI: 1.04, 1.27] per 10-ppb increase), cardiopulmonary (1.17 [95% CI: 1.02, 1.34]), and lung cancer (1.09 [95% CI: 0.76, 1.57]) deaths; however, in this dataset NO_2 was highly correlated with $PM_{2.5}$ (r = 0.78), SO_4 2 − (r = 0.78), and SO_2 (r = 0.84).

In contrast, the characterization in the PM Staff Paper (EPA, 2005) of the study by Krewski *et al.* (2000), referenced by NAM in their comments, refers to the results of the ACS study. Therefore, NAM appears to have confused the conclusions on the results of the reanalysis of the Harvard Six Cities Study in the NO_X ISA with the conclusions on the results of the reanalysis of the ACS study in the PM Staff Paper.

Further, in considering the reanalysis of the ACS study by Krewski *et al.* (2000), the NO_X ISA observed that "NO_2 showed no associations with mortality outcomes" (ISA, p. 3–74). This statement is consistent with the interpretation of that reanalysis as discussed in the PM Staff Paper. Thus, there is no inconsistency in the interpretation of the results of the study by Krewski *et al.* (2000) in the PM Staff Paper (EPA, 2005) and the NO_X ISA (EPA, 2008a).

NAM also commented that EPA has relied on a study by Schildcrout *et al.* (2006) in the NO_X ISA but declined to rely on the same study for the previous review of the O_3 NAAQS. NAM made the following comment regarding the study by Schildcrout *et al:*

Another example of how EPA has reached different scientific conclusions in the Final ISA than in prior NAAQS documents is provided by the Schildcrout, *et al.* (2006) study. In the Final ISA, EPA includes an extensive discussion of this study of asthmatic children and the relationship purportedly found in this study between NO_2 and various respiratory symptoms. In contrast, as part of the NAAQS review for ozone, EPA expressly declined to rely on this same study because of specific limitations in the study design. Among the limitations EPA cites were the fact that the Schildcrout, *et al.* (2006) study included "children in which the severity of their asthma was not clearly identified," and the use of a study population that was "not comparable to other large multi-city studies." EPA must explain why it chose to discount the value of the Schildcrout, *et al.* (2006) study when evaluating the effects of ozone, but has relied on it extensively in the Final ISA for NO_2.

The study by Schildcrout *et al.* (2006) appeared in the peer-review literature too late to be considered in the 2006 O_3 AQCD; however, this study was included in the O_3 Provisional Assessment. The purpose of the Provisional Assessment was to determine if new literature materially changed any of the broad scientific conclusions regarding the health effects of O_3 exposure as stated in the 2006 O_3 AQCD. EPA concluded that, taken in context, the "new" information and findings did not materially change any of the broad scientific conclusions regarding the health effects of O_3 exposure made in the O_3 AQCD. Therefore, NAM's contention that EPA "declined" to rely on the Schildcrout study for the O_3 review because of limitations in study design is not correct.

The observations NAM draws from the O_3 Provisional Assessment regarding severity of asthma and the study population do not indicate limitations that resulted in EPA "discounting" the study results. Rather, these observations were intended to put the study in perspective for purposes of interpreting the results within the context of the larger body of O_3 health effects evidence. These observations were drawn from comments submitted by Dr. Schildcrout regarding the interpretation of the results of his study in the decision to revise the ozone standards (*see* docket ID EPA–HQ–OAR–2005–0172–6991). The results of this study are being fully considered in the ongoing review of the ozone NAAQS.

Finally, NAM contends that EPA reached differing scientific conclusions on the use of self-reported peak expiratory flow (PEF) depending on regulatory context, particularly in the large multi-city trial by Mortimer *et al.* (2002). We disagree with this contention. EPA consistently examines clinical measurements of lung function, which include PEF, forced expiratory flow in 1 second (FEV_1), forced vital capacity (FVC), maximal midexpiratory flow (MMEF), maximal expiratory flow at 50% (MEF_{50}), maximal expiratory flow at 25% (MEF_{25}), and forced expiratory flow at 25 to 75% of FVC ($FEF_{25–75}$). Evidence for all of these clinical measurements is considered before drawing a conclusion related to the association of lung function with a criteria pollutant. In different reviews, there may be more evidence from one of these clinical measurements than another. In the previous review of the O_3 NAAQS, EPA identified statistically significant associations between increased ozone levels and morning PEF, which remained significant even when concentrations exceeding 0.08 ppm were excluded from the analysis (Mortimer *et al.* 2002). EPA considered this evidence, along with evidence of other clinical measurements of changes in lung function, in drawing conclusions on the relationship between ozone and lung function. Using a similar approach to weigh the evidence pertinent to lung function, including studies that produced no statistically significant results for PEF, the NO_X ISA (section 3.1.5.3) states:

In summary, epidemiologic studies using data from supervised lung function measurements (spirometry or peak flow meters) report small decrements in lung function (Hoek and Brunekreef, 1994; Linn *et al.,* 1996; Moshammer *et al.,* 2006; Peacock *et al.,* 2003; Schindler *et al.,* 2001). No significant associations were reported in any studies using unsupervised, self-administered peak flow [PEF] measurements with portable devices.

The evaluation of the evidence in the NO_X ISA is consistent with the way the evidence from multiple clinical measures of lung function was used in the review of the O_3 NAAQS.

b. Comments on EPA's Interpretation of the Controlled Human Exposure Evidence

A number of industry groups (*e.g.,* AAM, ACC, API, Dow Chemical Company (Dow), EMA, NAM, UARG) disagreed with EPA's reliance on a meta-analysis of controlled human exposure studies of airway responsiveness in asthmatics. Based on this meta-analysis (ISA, Table 3.1–3 for results), the ISA concluded that "small but significant increases in nonspecific airway hyperresponsiveness were

observed * * * at 0.1 ppm NO_2 for 60-min exposures in asthmatics" (ISA, p. 5–11). Industry groups raised a number of objections to this analysis and the way in which it has been used in the current review.

Several of these industry groups concluded that, in relying on this analysis, EPA has inappropriately relied on a new unpublished meta-analysis that has not been peer-reviewed, was not reviewed by CASAC, and was not conducted in a transparent manner. For example, as part of a Request for Correction submitted under EPA's Information Quality Guidelines, NAM stated that "EPA's substantial reliance on an unpublished assessment described as a "meta-analysis" of the relation between NO_2 exposure and changes in airway responsiveness violates EPA Guidelines requiring "transparency about data and methods."

EPA disagrees with this characterization of the updated meta-analysis included in the final ISA. As described in the ISA (p. 3–16), this meta-analysis is based on an earlier analysis by Folinsbee (1992) that has been subject to peer-review, that was published in a scientific journal (*Toxicol Ind Health.* 8:1–11, 1992), and that was reviewed by CASAC as part of the previous review of the NO_2 NAAQS (EPA, 1993, Table 15–10). The updates to this earlier analysis did not include substantive changes to the approach. As discussed in the final ISA (p. 3–16), the changes made to the analysis were to remove the results of one allergen study and add results from a non-specific responsiveness study, which focused the meta-analysis on non-specific airway responsiveness, and to discuss results for an additional exposure concentration (*i.e.,* 100 ppb). The information needed to reproduce this meta-analysis is provided in the ISA (Tables 3.1–2 and 3.1–3, including footnotes).

While the ISA meta-analysis reports findings on airway responsiveness in asthmatics following exposure to 100 ppb NO_2, a concentration not specifically discussed in the findings of the original report by Folinsbee (1992), this does not constitute a substantive change to that original analysis. For exposures at rest, four of the studies included in the analysis by Folinsbee evaluated the effects of exposure to 100 ppb NO_2. In that original meta-analysis, these studies were grouped with another study that evaluated exposures to 140 ppb NO_2. When analyzed together, exposures to NO_2 concentrations of 100 ppb and 140 ppb (grouped together in the manuscript and described as less than 0.2 ppm) increased airway responsiveness in 65% of resting asthmatics ($p < 0.01$). Therefore, reporting results at 100 ppb NO_2 in the ISA meta-analysis reflects a change in the way the data are presented and does not reflect a substantive change to the study. This change in presentation allows specific consideration of the potential for exposures to 100 ppb NO_2 to increase airway responsiveness, rather than grouping results at 100 ppb with results at other exposure concentrations.

In addition, the updated meta-analysis was considered by CASAC during their review of the REA (REA, Table 4–5 reports the results of the updated meta-analysis), which based part of the assessment of NO_2-associated health risks on the results of the meta-analysis. In their letter to the Administrator on the final REA (Samet, 2008b), CASAC stated that "[t]he evidence reviewed in the REA indicates that adverse health effects have been documented in clinical studies of persons with asthma at 100 ppb" and that "CASAC firmly recommends that the upper end of the range [of standard levels] not exceed 100 ppb, given the findings of the REA." In addition, in their comments on the proposal, CASAC reiterated this advice in their statement that "the level of the one-hour NO_2 standard should be within the range of 80–100 ppb and not above 100 ppb." These statements indicate that CASAC did specifically consider the results of the updated meta-analysis and that they used those results to inform their recommendations on the range of standard levels supported by the scientific evidence.

In summary, we note the following:

- The original meta-analysis was published in a peer-reviewed journal and was reviewed by CASAC in the previous review of the NO_2 NAAQS.
- The updated meta-analysis does not include substantive changes to the methodology of this original analysis.
- The changes that were made are clearly described in the ISA.
- CASAC specifically reviewed and considered the ISA meta-analysis in making recommendations regarding the range of standard levels supported by the science.

Many of these same industry groups also referred in their comments to a recent meta-analysis of controlled human exposure studies evaluating the airway response in asthmatics following NO_2 exposure (Goodman *et al.,* 2009). These groups generally recommended that EPA rely on this meta-analysis and on the authors' conclusions with regard to NO_2 and airway responsiveness. Specific comments based on the manuscript by Goodman *et al.,* as well as EPA's responses, are discussed below in more detail.[9]

Industry commenters generally claimed that the meta-analysis by Goodman *et al.* supports the conclusion that no adverse effects occur following exposures up to 600 ppb NO_2. However, Table 4 of the Goodman study reports that 64% (95% Confidence Interval: 58%, 71%) of resting asthmatics exposed to NO_2 experienced an increase in airway responsiveness. Furthermore, Figure 2a of this manuscript reports that for exposures < 0.2 ppm, the fraction affected is 0.61 (95% CI: 0.52, 0.70) while for exposures of 0.2 ppm to < 0.3 ppm, the fraction affected is 0.66 (95% CI: 0.59, 0.74). These findings are consistent with those reported in the meta-analysis by Folinsbee and in the updated meta-analysis that was included in the final ISA.

Also based on the meta-analysis by Goodman *et al.* (2009), several industry commenters concluded that NO_2-induced airway hyperresponsiveness is not adverse and, therefore, should not be considered in setting standards. The basis for this comment appears to be the conclusions reached by Goodman *et al.* that there is no dose-response relationship for NO_2 and that the magnitude of any NO_2 effect on airway responsiveness is too small to be considered adverse.

Due to differences in study protocols in the NO_2-airway response literature (ISA, section 3.1.3), EPA disagrees with the approach taken in the Goodman study to use existing data to attempt to evaluate the presence of a dose-response relationship and to determine the magnitude of the NO_2 response. Examples of differences in the study protocols include the NO_2 exposure method (*i.e.,* mouthpiece versus chamber), subject activity level (*i.e.,* rest versus exercise) during NO_2 exposure, choice of airway challenge agent, and physiological endpoint used to quantify airway responses. Goodman *et al.* (2009) also recognized heterogeneity among studies as a limitation in their analyses.

As a result of these differences, EPA judged it appropriate in the ISA meta-analysis to assess only the fraction of asthmatics experiencing increased or decreased airway responsiveness

[9] EPA considers the Goodman study to be a "new study" on which, as discussed above in section 1.B, it would not be appropriate to base a standard in the absence of thorough CASAC and public review of the study and its methodology. However, as discussed below, EPA has considered the study in the context of responding to public comments on the proposal and has concluded it does not provide a basis to materially change any of the broad scientific conclusions regarding the health effects of NO_2 made in the air quality criteria.

following NO_2 exposure. We have acknowledged in the REA, the proposal, and in this final rulemaking that there is uncertainty with regard to the magnitude and the clinical-significance of NO_2-induced increases in airway responsiveness (*see* sections II.C.3 and II.F.4.a in the proposed rulemaking as well as II.F.3 in this final rulemaking). The REA stated the following (p. 302):

> [O]ne of the important uncertainties associated with these [NO_2-induced airway hyperresponsiveness] results is that, because the meta-analysis evaluated only the direction of the change in airway responsiveness, it is not possible to discern the magnitude of the change from these data. This limitation makes it particularly difficult to quantify the public health implications of these results.

While we acknowledge this uncertainty, EPA disagrees with the conclusion that the NO_2-induced increase in airway responsiveness in asthmatics exposed to NO_2 concentrations up to 600 ppb is not adverse and should not be considered in setting standards. Specifically, we note that the ISA concluded that "[t]ransient increases in airway responsiveness following NO_2 exposure have the potential to increase symptoms and worsen asthma control" (ISA, section 5.4). The uncertainty over the adversity of the response reported in controlled human exposure studies does not mean that the NO_2-induced increase in airway responsiveness is not adverse. Rather, it means that there is a risk of adversity, especially for asthmatics with more than mild asthma, but that this risk cannot be fully characterized based on existing studies. The studies of NO_2 and airway responsiveness included in the meta-analysis have generally evaluated mild asthmatics, rather than more severely affected asthmatics who could be more susceptible to the NO_2-induced increase in airway responsiveness (ISA, section 3.1.3.2). Given that this is the case, and given the large percentage of asthmatics that experienced an NO_2-induced increase in airway responsiveness in the studies and the large size of the asthmatic population in the United States, the REA concluded that it is appropriate to consider NO_2-induced airway hyperresponsiveness in characterizing NO_2-associated health risks (REA, section 10.3.2). As noted above, CASAC endorsed this conclusion in their letters to the Administrator on the final REA and on the proposal (Samet, 2008b; Samet, 2009).

c. Comments on EPA's Characterization of NO_2-Associated Exposures and Health Risks

Several commenters discussed the analyses of NO_2-associated exposures and health risks presented in the REA. As in past reviews (EPA 2005, 2007c, 2007d), EPA has estimated allowable risks associated with the current standard and potential alternative standards to inform judgments on the public health risks that could exist under different standard options. Some industry commenters (*e.g.,* API, NMA) concluded that the Administrator should consider modeled exposures and risks associated with actual NO_2 air quality rather than with NO_2 concentrations adjusted to simulate just meeting the current annual standard or potential alternative 1-hour standards. These commenters pointed out that such simulations require large adjustments to air quality and are highly uncertain and that NAAQS are intended to address actual, rather than highly improbable, risks to health.

We disagree with these commenters that exposure- and risk-related considerations in the NAAQS review should rely only on unadjusted air quality. In considering whether the current standard is requisite to protect public health with an adequate margin of safety, air quality adjustments allow estimates of NO_2-related exposures and health risks that could exist in areas that just meet that standard. That is, these adjustments allow consideration of exposures and risks that would be permissible under the current standard. Therefore, such adjustments are clearly useful to inform a decision on the issue before EPA (*i.e.,* the adequacy of the level of public health protection associated with allowable NO_2 air quality under the standard). Similarly, air quality adjustments to simulate different potential alternative standards provide information on exposures and risks that would be permissible under these alternatives.[10] As noted above, in their letter to the Administrator on the final REA (Samet, 2008b), CASAC concluded that "The REA provides the needed bridge from the evidence presented in the ISA to a characterization of the exposures and the associated risks with different profiles of exposure."

We agree that there are uncertainties inherent in air quality adjustments. These uncertainties are discussed thoroughly in the REA (sections 7.4, 8.12, 9.6, and 10.3.2.1) and in the proposed rule (section II.C.3). For example, the policy assessment chapter of the REA (section 10.3.2.1) noted the following regarding adjustment of NO_2 concentrations:

> In order to simulate just meeting the current annual standard and many of the alternative 1-h standards analyzed, an upward adjustment of recent ambient NO_2 concentrations was required. We note that this adjustment does not reflect a judgment that levels of NO_2 are likely to increase under the current standard or any of the potential alternative standards under consideration. Rather, these adjustments reflect the fact that the current standard, as well as some of the alternatives under consideration, could allow for such increases in ambient NO_2 concentrations. In adjusting air quality to simulate just meeting these standards, we have assumed that the overall shape of the distribution of NO_2 concentrations would not change. While we believe this is a reasonable assumption in the absence of evidence supporting a different distribution and we note that available analyses support this approach (Rizzo, 2008), we recognize this as an important uncertainty. It may be an especially important uncertainty for those scenarios where considerable upward adjustment is required to simulate just meeting one or more of the standards.

These air quality adjustments are not meant to imply an expectation that NO_2 concentrations will increase broadly across the United States or in any given area (REA, section 10.3.2.1). Rather, as noted above, they are meant to estimate NO_2-related exposures and health risks that would be permitted under the current and potential alternative standards. Such estimates can inform decisions on whether the current standard, or particular potential alternative standards, provide the requisite protection of public health.

3. Conclusions Regarding the Adequacy of the Current Standard

In considering the adequacy of the current standard, the Administrator has considered the scientific evidence assessed in the ISA, the exposure and risk results presented in the REA, the conclusions of the policy assessment chapter of the REA, and comments from CASAC and the public. These considerations are described below.

In considering the scientific evidence as it relates to the adequacy of the current standard, the Administrator notes that the epidemiologic evidence has grown substantially since the last review with the addition of field and panel studies, intervention studies, and time-series studies of effects such as emergency department visits and hospital admissions associated with

[10] Once EPA determines whether to retain or revise the current standard, the actual air quality levels in various areas of the country are clearly relevant under the NAAQS implementation provisions for the Act, such as the provision for designation of areas based on whether or not they attain the required NAAQS.

short-term NO_2 exposures. No epidemiologic studies were available in 1993 assessing relationships between NO_2 and outcomes such as hospital admissions or emergency department visits. In contrast, dozens of epidemiologic studies on such outcomes, conducted at recent and current ambient NO_2 concentrations, are now included in this evaluation (ISA, chapter 3).

As an initial consideration with regard to the adequacy of the current standard, the Administrator notes that the evidence relating long-term (weeks to years) NO_2 exposures at current ambient concentrations to adverse health effects was judged in the ISA to be either "suggestive but not sufficient to infer a causal relationship" (respiratory morbidity) or "inadequate to infer the presence or absence of a causal relationship" (mortality, cancer, cardiovascular effects, reproductive/developmental effects) (ISA, sections 5.3.2.4–5.3.2.6). In contrast, the evidence relating short-term (minutes to hours) NO_2 exposures to respiratory morbidity was judged to be "sufficient to infer a likely causal relationship" (ISA, section 5.3.2.1). This conclusion was supported primarily by a large body of recent epidemiologic studies that evaluated associations of short-term NO_2 concentrations with respiratory symptoms, emergency department visits, and hospital admissions. Given these conclusions from the ISA, the Administrator judges that, at a minimum, consideration of the adequacy of the current annual standard should take into account the extent to which that standard provides protection against respiratory effects associated with short-term NO_2 exposures.

In considering the NO_2 epidemiologic studies as they relate to the adequacy of the current standard, the Administrator notes that annual average NO_2 concentrations were below the level of the current annual NO_2 NAAQS in many of the locations where positive, and often statistically significant, associations with respiratory morbidity endpoints have been reported (ISA, section 5.4). As discussed previously, the ISA characterized that evidence for respiratory effects as consistent and coherent. The evidence is consistent in that associations are reported in studies conducted in numerous locations and with a variety of methodological approaches (ISA, section 5.3.2.1). It is coherent in the sense that the studies report associations with respiratory health outcomes that are logically linked together (ISA, section 5.3.2.1). The ISA noted that when the epidemiologic literature is considered as a whole, there are generally positive associations between NO_2 and respiratory symptoms, hospital admissions, and emergency department visits. A number of these associations are statistically significant, particularly the more precise effect estimates (ISA, section 5.3.2.1).

As discussed in the proposal (II.E.1) and above, the Administrator acknowledges that the interpretation of these NO_2 epidemiologic studies is complicated by the fact that on-road vehicle exhaust emissions are a nearly ubiquitous source of combustion pollutant mixtures that include NO_2. She notes that, in order to provide some perspective on the uncertainty related to the presence of co-pollutants the ISA evaluated epidemiologic studies that employed multi-pollutant models, epidemiologic studies of indoor NO_2 exposure, and experimental studies. Specifically, the ISA noted that a number of NO_2 epidemiologic studies have attempted to disentangle the effects of NO_2 from those of co-occurring pollutants by employing multi-pollutant models. When evaluated as a whole, NO_2 effect estimates in these models generally remained robust when co-pollutants were included. Therefore, despite uncertainties associated with separating the effects of NO_2 from those of co-occurring pollutants, the ISA (section 5.4, p. 5–16) concluded that "the evidence summarized in this assessment indicates that NO_2 associations generally remain robust in multi-pollutant models and supports a direct effect of short-term NO_2 exposure on respiratory morbidity at ambient concentrations below the current NAAQS." With regard to indoor studies, the ISA noted that these studies can test hypotheses related to NO_2 specifically (ISA, section 3.1.4.1). Although confounding by indoor combustion sources is a concern, indoor studies are not confounded by the same mix of co-pollutants present in the ambient air or by the contribution of NO_2 to the formation of secondary particles or O_3 (ISA, section 3.1.4.1). The ISA noted that the findings of indoor NO_2 studies are consistent with those of studies using ambient concentrations from central site monitors and concluded that indoor studies provide evidence of coherence for respiratory effects (ISA, section 3.1.4.1). With regard to experimental studies, the REA noted that they have the advantage of providing information on health effects that are specifically associated with exposure to NO_2 in the absence of co-pollutants. The ISA concluded that the NO_2 epidemiologic literature is supported by (1) evidence from controlled human exposure studies of airway hyperresponsiveness in asthmatics, (2) controlled human exposure and animal toxicological studies of impaired host-defense systems and increased risk of susceptibility to viral and bacterial infection, and (3) controlled human exposure and animal toxicological studies of airway inflammation (ISA, section 5.3.2.1 and 5.4). Given the above consideration of the evidence, particularly the epidemiologic studies reporting NO_2-associated health effects in locations that meet the current standard, the Administrator agrees with the conclusion in the policy assessment chapter of the REA that the scientific evidence calls into question the adequacy of the current standard to protect public health.

In addition to the evidence-based considerations described above, the Administrator has considered the extent to which exposure- and risk-based information can inform decisions regarding the adequacy of the current annual NO_2 standard. While she acknowledges the uncertainties associated with adjusting air quality in these analyses, she judges that such analyses are appropriate for consideration in this review of the NO_2 primary NAAQS. In reaching this conclusion she notes the considerations discussed above, particularly the endorsement by CASAC of the REA and its characterization of NO_2-associated exposures and health risks.

In considering the exposure- and risk-based information with regard to the adequacy of the current annual NO_2 standard to protect the public health, the Administrator notes the conclusion in the policy assessment chapter of the REA that risks estimated to be associated with air quality adjusted upward to simulate just meeting the current standard can reasonably be concluded to be important from a public health perspective. In particular, a large percentage (8–9%) of respiratory-related ED visits in Atlanta could be associated with short-term NO_2 exposures, most asthmatics in Atlanta could be exposed on multiple days per year to NO_2 concentrations at or above 300 ppb, and most locations evaluated could experience on-/near-road NO_2 concentrations above 100 ppb on more than half of the days in a given year. Therefore, after considering the results of the exposure and risk analyses presented in the REA the Administrator agrees with the conclusion of the policy assessment chapter of the REA that exposure- and risk-based results reinforce the scientific evidence in

supporting the conclusion that consideration should be given to revising the current standard so as to provide increased public health protection, especially for at-risk groups, from NO_2-related adverse health effects associated with short-term, and potential long-term, exposures.

In reaching a conclusion on the adequacy of the current standard, the Administrator has also considered advice received from CASAC. In their comments on the final REA, CASAC agreed that the primary concern in this review is to protect against health effects that have been associated with short-term NO_2 exposures. CASAC also agreed that the current annual standard is not sufficient to protect public health against the types of exposures that could lead to these health effects. As noted in their letter to the EPA Administrator, "CASAC concurs with EPA's judgment that the current NAAQS does not protect the public's health and that it should be revised" (Samet, 2008b).

Based on the considerations discussed above, the Administrator concludes that the current NO_2 primary NAAQS alone is not requisite to protect public health with an adequate margin of safety. Accordingly, she concludes that the NO_2 primary standard should be revised in order to provide increased public health protection against respiratory effects associated with short-term exposures, particularly for susceptible populations such as asthmatics, children, and older adults. In considering approaches to revising the current standard, the Administrator concludes that it is appropriate to consider setting a new short-term standard (*see* below). The Administrator notes that such a short-term standard could provide increased public health protection, especially for members of at-risk groups, from effects described in both epidemiologic and controlled human exposure studies to be associated with short-term exposures to NO_2.

F. Elements of a New Short-Term Standard

In considering a revised NO_2 primary NAAQS, the Administrator notes the need to protect at-risk individuals from short-term exposures to NO_2 air quality that could cause the types of respiratory morbidity effects reported in epidemiologic studies and the need to protect at-risk individuals from short-term exposure to NO_2 concentrations reported in controlled human exposure studies to increase airway responsiveness in asthmatics. The Administrator's considerations with regard to her decisions are discussed in the following sections in terms of indicator (II.F.1), averaging time (II.F.2), level (II.F.3), and form (II.F.4).

1. Indicator

a. Rationale for Proposed Decision

In past reviews, EPA has focused on NO_2 as the most appropriate indicator for ambient NO_X. In making a decision in the current review on the most appropriate indicator, the Administrator considered the conclusions of the ISA and the policy assessment chapter of the REA as well as the view expressed by CASAC. The policy assessment chapter of the REA noted that, while the presence of NO_X species other than NO_2 has been recognized, no alternative to NO_2 has been advanced as being a more appropriate surrogate. Controlled human exposure studies and animal toxicology studies assessed in the ISA provide specific evidence for health effects following exposure to NO_2. Epidemiologic studies also typically report levels of NO_2 though the degree to which monitored NO_2 reflects actual NO_2 levels, as opposed to NO_2 plus other gaseous NO_X, can vary (REA, section 2.2.3). In addition, because emissions that lead to the formation of NO_2 generally also lead to the formation of other NO_X oxidation products, measures leading to reductions in population exposures to NO_2 can generally be expected to lead to reductions in population exposures to other gaseous NO_X. Therefore, an NO_2 standard can also be expected to provide some degree of protection against potential health effects that may be independently associated with other gaseous NO_X even though such effects are not discernable from currently available studies indexed by NO_2 alone. Given these key points, the policy assessment chapter of the REA concluded that the evidence supports retaining NO_2 as the indicator. Consistent with this conclusion, the CASAC Panel stated in its letter to the EPA Administrator that it "concurs with retention of NO_2 as the indicator" (Samet, 2008b). In light of the above considerations, the Administrator proposed to retain NO_2 as the indicator in the current review.

b. Comments on Indicator

A relatively small number of comments directly addressed the issue of the indicator for the standard (CASAC, Dow, API, AAM, and the Missouri Department of Natural Resources Air Pollution Control Program (MODNR)). All of these commenters endorsed the proposal to continue to use NO_2 as the indicator for ambient NO_X.

c. Conclusions on Indicator

Based on the available information discussed above, and consistent with the views of CASAC and other commenters, the Administrator concludes that it is appropriate to continue to use NO_2 as the indicator for a standard that is intended to address effects associated with exposure to NO_2, alone or in combination with other gaseous NO_X. In so doing, the Administrator recognizes that measures leading to reductions in population exposures to NO_2 will also reduce exposures to other nitrogen oxides.

2. Averaging Time

This section discusses considerations related to the averaging time of the NO_2 primary NAAQS. Specifically, this section summarizes the rationale for the Administrator's proposed decision regarding averaging time (II.F.2.a; *see* section II.F.2 of the proposal for more detail), discusses comments related to averaging time (II.F.2.b), and presents the Administrator's final conclusions regarding averaging time (II.F.2.c).

a. Rationale for Proposed Decision

In considering the most appropriate averaging time for the NO_2 primary NAAQS, the Administrator noted in the proposal the conclusions and judgments made in the ISA about available scientific evidence, air quality correlations discussed in the REA, conclusions of the policy assessment chapter of the REA, and CASAC recommendations (section II.F.2 in the proposal). Specifically, she noted the following:

- Experimental studies in humans and animals have reported respiratory effects following NO_2 exposures lasting from less than 1-hour up to several hours. Epidemiologic studies have reported associations between respiratory effects and both 1 hour and 24-hour NO_2 concentrations. Therefore, the experimental evidence provides support for an averaging time of shorter duration than 24 hours (*e.g.,* 1 hour) while the epidemiologic evidence provides support for both 1-hour and 24-hour averaging times. At a minimum, this suggests that a primary concern with regard to averaging time is the level of protection provided against 1-hour NO_2 concentrations.
- Air quality correlations presented in the policy assessment chapter of the REA illustrated the relatively high degree of variability in the ratios of annual average to short-term NO_2 concentrations (REA, Table 10–2). This

variability suggests that a standard based on annual average NO_2 concentrations would not likely be an effective or efficient approach to focus protection on short-term exposures.

- These air quality correlations (REA, Table 10–1) suggested that a standard based on 1-hour daily maximum NO_2 concentrations could also be effective at protecting against 24-hour NO_2 concentrations.
- The policy assessment chapter of the REA concluded that the scientific evidence, combined with the air quality correlations, support the appropriateness of a standard based on 1-hour daily maximum NO_2 concentrations to protect against health effects associated with short-term exposures.
- CASAC concurred "with having a short-term NAAQS primary standard for oxides of nitrogen and using the one-hour maximum NO_2 value" (Samet, 2008b).

Based on these considerations, the Administrator proposed to set a new standard based on 1-hour daily maximum NO_2 concentrations.

b. Comments on averaging time

As discussed above, CASAC endorsed the establishment of a new standard with a 1-hour averaging time. CASAC stated the following in their comments on the proposal (Samet, 2009):

> In reviewing the REA, CASAC supported a short-term standard for NO_2 and in reviewing the proposal, CASAC supports the proposed one-hour averaging time in EPA's proposed rule.

The supporting rationale offered by CASAC in support of a new 1-hour standard was generally the same as that put forward in the final REA and the proposal. Specifically, that rationale considered the available scientific evidence, which supports a link between 1-hour NO_2 concentrations and adverse respiratory effects, and air quality information presented in the REA, which suggests that a 1-hour standard can protect against effects linked to short-term NO_2 exposures while an annual standard would not be an effective or efficient approach to protecting against these effects.

A large number of public commenters also endorsed the establishment of a new standard with a 1-hour averaging time. These included a number of State agencies and organizations (*e.g.,* NACAA, NESCAUM and agencies in CA, IL, NM, TX, VA); environmental, medical, and public health organizations (*e.g.,* ACCP, ALA, AMA, ATS, CAC, EDF, EJ, GASP, NACPR, NAMDRC, NRDC); and most individual commenters. The supporting rationales offered by these commenters often acknowledged the recommendations of CASAC and the Administrator's rationale as discussed in the proposal.

Though many industry commenters recommended not revising the current annual standard (as discussed above in section II.E.2), several of these groups did conclude that if a short-term standard were to be set, a 1-hour averaging time would be appropriate (*e.g.,* Colorado Petroleum Association (CPA), Dow, NAM, Petroleum Association of Wyoming (PAW), Utah Petroleum Association (UPA)). As discussed above, industry commenters who disagreed with setting a new 1-hour standard generally based this conclusion on their interpretation of the scientific evidence and their conclusion that this evidence does not support the need to revise the current annual standard. These comments, and EPA's responses, are discussed in more detail above (section II.E) and in the Response to Comments document.

c. Conclusions on Averaging Time

In considering the most appropriate averaging time for the NO_2 primary NAAQS, the Administrator notes the available scientific evidence as assessed in the ISA, the air quality analyses presented in the REA, the conclusions of the policy assessment chapter of the REA, CASAC recommendations, and public comments received. These considerations are described below.

When considering averaging time, the Administrator notes that the evidence relating short-term (minutes to hours) NO_2 exposures to respiratory morbidity was judged in the ISA to be "sufficient to infer a likely causal relationship" (ISA, section 5.3.2.1) while the evidence relating long-term (weeks to years) NO_2 exposures to adverse health effects was judged to be either "suggestive but not sufficient to infer a causal relationship" (respiratory morbidity) or "inadequate to infer the presence or absence of a causal relationship" (mortality, cancer, cardiovascular effects, reproductive/developmental effects) (ISA, sections 5.3.2.4–5.3.2.6). Thus, the Administrator concludes that these judgments most directly support an averaging time that focuses protection on short-term exposures to NO_2.

As in past reviews of the NO_2 NAAQS, the Administrator notes that it is instructive to evaluate the potential for a standard based on annual average NO_2 concentrations, as is the current standard, to provide protection against short-term NO_2 exposures. To this end, the Administrator notes that Table 10–1 in the REA reported the ratios of short-term to annual average NO_2 concentrations. Ratios of 1-hour daily maximum concentrations (98th and 99th percentile [11]) to annual average concentrations across 14 locations ranged from 2.5 to 8.7 while ratios of 24-hour average concentrations to annual average concentrations ranged from 1.6 to 3.8 (*see* Thompson, 2008 for more details). The policy assessment chapter of the REA concluded that the variability in these ratios across locations, particularly those for 1-hour concentrations, suggested that a standard based on annual average NO_2 concentrations would not likely be an effective or efficient approach to focus protection on short-term NO_2 exposures. For example, in an area with a relatively high ratio (*e.g.,* 8), the current annual standard (53 ppb) would be expected to allow 1-hour daily maximum NO_2 concentrations of about 400 ppb. In contrast, in an area with a relatively low ratio (*e.g.,* 3), the current standard would be expected to allow 1-hour daily maximum NO_2 concentrations of about 150 ppb. Thus, for purposes of protecting against the range of 1-hour NO_2 exposures, the REA noted that a standard based on annual average concentrations would likely require more control than necessary in some areas and less control than necessary in others, depending on the standard level selected.

In considering the level of support available for specific short-term averaging times, the Administrator notes that the policy assessment chapter of the REA considered evidence from both experimental and epidemiologic studies. Controlled human exposure studies and animal toxicological studies provide evidence that NO_2 exposures from less than 1-hour up to 3-hours can result in respiratory effects such as increased airway responsiveness and inflammation (ISA, section 5.3.2.7). Specifically, the ISA concluded that NO_2 exposures of 100 ppb for 1-hour (or 200 ppb to 300 ppb for 30-min) can result in small but significant increases in nonspecific airway responsiveness (ISA, section 5.3.2.1). In contrast, the epidemiologic literature provides support for short-term averaging times ranging from approximately 1-hour up to 24-hours (ISA, section 5.3.2.7). A

[11] As discussed below, 98th and 99th percentile forms were evaluated in the REA. A 99th percentile form corresponds approximately to the 4th highest 1-hour concentration in a year while a 98th percentile form corresponds approximately to the 7th or 8th highest 1-hour concentration in a year. A 4th highest concentration form has been used previously in the O_3 NAAQS while a 98th percentile form has been used previously in the $PM_{2.5}$ NAAQS.

number of epidemiologic studies have detected positive associations between respiratory morbidity and 1-hour (daily maximum) and/or 24-hour NO_2 concentrations. A few epidemiologic studies have considered both 1-hour and 24-hour averaging times, allowing comparisons to be made. The ISA reported that such comparisons in studies that evaluate asthma emergency department visits failed to reveal differences between effect estimates based on a 1-hour averaging time and those based on a 24-hour averaging time (ISA, section 5.3.2.7). Therefore, the ISA concluded that it is not possible, from the available epidemiologic evidence, to discern whether effects observed are attributable to average daily (or multi-day) concentrations (24-hour average) or high, peak exposures (1-hour maximum) (ISA, section 5.3.2.7).

As noted in the policy assessment chapter of the REA, given the above conclusions, the experimental evidence provides support for an averaging time of shorter duration than 24 hours (*e.g.,* 1–h) while the epidemiologic evidence provides support for both 1-hour and 24-hour averaging times. The Administrator concludes that, at a minimum, this suggests that a primary concern with regard to averaging time is the level of protection provided against 1-hour NO_2 concentrations. However, she also notes that it is important to consider the ability of a 1-hour averaging time to protect against 24-hour average NO_2 concentrations. To this end, the Administrator notes that Table 10–2 in the REA presented correlations between 1-hour daily maximum NO_2 concentrations and 24-hour average NO_2 concentrations (98th and 99th percentile) across 14 locations (*see* Thompson, 2008 for more detail). Typical ratios ranged from 1.5 to 2.0, though one ratio (Las Vegas) was 3.1. These ratios were far less variable than those discussed above for annual average concentrations, suggesting that a standard based on 1-hour daily maximum NO_2 concentrations could also be effective at protecting against 24-hour NO_2 concentrations. The REA concluded that the scientific evidence, combined with the air quality correlations described above, support the appropriateness of a standard based on 1-hour daily maximum NO_2 concentrations to protect against health effects associated with short-term exposures.

Based on these considerations, the Administrator concludes that a standard with a 1-hour averaging time can effectively limit short-term (*i.e.,* 1- to 24-hours) exposures that have been linked to adverse respiratory effects. This conclusion is based on the observations summarized above and in more detail in the proposal, particularly that: (1) The 1-hour averaging time has been directly associated with respiratory effects in both epidemiologic and experimental studies and that (2) results from air quality analyses suggest that a 1-hour standard could also effectively control 24-hour NO_2 concentrations. In addition, the Administrator notes the support provided for a 1-hour averaging time in comments from CASAC, States, environmental groups, and medical/public health groups. The Administrator notes that arguments offered by some industry groups against setting a 1-hour NO_2 standard generally focus on commenters' conclusions regarding uncertainties in the scientific evidence. As discussed in more detail above (section II.E.2), the Administrator disagrees with the conclusions of these commenters regarding the appropriate interpretation of the scientific evidence and associated uncertainties. Given these considerations, the Administrator judges that it is appropriate to set a new NO_2 standard with a 1-hour averaging time.

3. Form

This section discusses considerations related to the form of the 1-hour NO_2 primary NAAQS. Specifically, this section summarizes the rationale for the Administrator's proposed decision regarding form (II.F.4.a; *see* section II.F.3 of the proposal for more detail), discusses comments related to form (II.F.4.b), and presents the Administrator's final conclusions regarding form (II.F.4.c).

a. Rationale For Proposed Decision

When considering alternative forms in the proposal, the Administrator noted the conclusions in the policy assessment chapter of the REA. Specifically, she noted the conclusion that the adequacy of the public health protection provided by the combination of standard level and form should be the foremost consideration. With regard to this, she noted that concentration-based forms can better reflect pollutant-associated health risks than forms based on expected exceedances. This is the case because concentration-based forms give proportionally greater weight to years when pollutant concentrations are well above the level of the standard than to years when the concentrations are just above the standard, while an expected exceedance form would give the same weight to years with concentrations that just exceed the standard as to years when concentrations greatly exceed the standard. The Administrator also recognized the conclusion in the policy assessment chapter of the REA that it is desirable from a public health perspective to have a form that is reasonably stable and insulated from the impacts of extreme meteorological events. With regard to this, she noted that a form that calls for averaging concentrations over three years would provide greater regulatory stability than a form based on a single year of concentrations. Therefore, consistent with recent reviews of the O_3 and PM NAAQS, the proposal focused on concentration-based forms averaged over 3 years, as evaluated in the REA.

In considering specific concentration-based forms, the REA focused on 98th and 99th percentile concentrations averaged over 3 years. This focus on the upper percentiles of the distribution is appropriate given the reliance, in part, on NO_2 health evidence from experimental studies, which provide information on specific exposure concentrations that are linked to specific health effects. The REA noted that a 99th percentile form for a 1-hour daily maximum standard would correspond approximately to the 4th highest daily maximum concentration in a year (which is the form of the current O_3 NAAQS) while a 98th percentile form (which is the form of the current short-term $PM_{2.5}$ NAAQS) would correspond approximately to the 7th or 8th highest daily maximum concentration in a year (REA, Table 10–4; *see* Thompson, 2008 for methods).

Consideration in the REA of an appropriate form for a 1-hour standard was based on analyses of standard levels that reflected the allowable area-wide NO_2 concentration, not the maximum allowable concentration. Therefore, in their review of the final REA, CASAC did not have the opportunity to comment on the appropriateness of specific forms in conjunction with a standard level that reflects the maximum allowable NO_2 concentration anywhere in an area. Given this, when considering alternative forms for the 1-hour standard in the proposal, the Administrator judged that it was appropriate to consider both forms evaluated in the REA (*i.e.,* 98th and 99th percentiles). Therefore, she proposed to adopt either a 99th percentile or a 4th highest form, averaged over 3 years, and she solicited comment on both 98th percentile and 7th or 8th highest forms.

b. CASAC and Public Comments on Form

In their letter to the Administrator, CASAC discussed the issue of form within the context of the proposed

approach of setting a 1-hour standard level that reflects the maximum allowable NO_2 concentration anywhere in an area. CASAC recommended that, for such a standard, EPA adopt a form based on the 3-year average of the 98th percentile of the distribution of 1-hour daily maximum NO_2 concentrations. Specifically, they stated the following in their comments on the proposal (Samet, 2009):

> The 98th percentile is preferred by CASAC for the form, given the likely instability of measurements at the upper range and the absence of data from the proposed two-tier approach.

As indicated in their letter, CASAC concluded that the potential instability in higher percentile NO_2 concentrations near major roads argues for a 98th, rather than a 99th, percentile form. Several State organizations and agencies (*e.g.,* NESCAUM and agencies in IN, NC, SD, VA) and industry groups (*e.g.,* AAM, ACC, API, AirQuality Research and Logistics (AQRL), CPA, Dow, ExxonMobil, IPAMS, PAW, UPA) also recommended a 98th percentile form in order to provide regulatory stability. In contrast, a small number of State and local agencies (*e.g.,* in MO and TX), several environmental organizations (*e.g.,* EDF, EJ, GASP, NRDC), and medical/public health organizations (*e.g.,* ALA, ATS) recommended either a 99th percentile form or a more stringent form (*e.g.,* no exceedance) to further limit the occurrence of NO_2 concentrations that exceed the standard level in locations that attain the standard.

c. Conclusions On Form

The Administrator recognizes that there is not a clear health basis for selecting one specific form over another. She also recognizes that the analyses of different forms in the REA are most directly relevant to a standard that reflects NO_2 concentrations permitted to occur broadly across a community, rather than the maximum concentration that can occur anywhere in the area. In contrast, as discussed below (section II.F.4.c), the Administrator has judged it appropriate to set a new 1-hour standard that reflects the maximum allowable NO_2 concentration anywhere in an area. In light of this, the Administrator places particular emphasis on the comments received on form from CASAC relating to a 1-hour standard level that reflects the maximum allowable NO_2 concentration anywhere in an area. In particular, the Administrator notes that CASAC recommended a 98th percentile form averaged over 3 years for such a standard, given the potential for instability in the higher percentile concentrations around major roadways.

In considering this recommendation, the Administrator recognizes that the public health protection provided by the 1-hour NO_2 standard is based on the approach used to set the standard and the level of the standard (*see* below), in conjunction with the form of the standard. Given that the Administrator is setting a standard that reflects the maximum allowable NO_2 concentration anywhere in an area, rather than a standard that reflects the allowable area-wide NO_2 concentration, she agrees with CASAC that an appropriate consideration with regard to form is the extent to which specific statistics could be unstable at locations where maximum NO_2 concentrations are expected, such as near major roads. When considering alternative forms for the standard, the Administrator notes that an unstable form could result in areas shifting in and out of attainment, potentially disrupting ongoing air quality planning without achieving public health goals. Given the limited available information on the variability in peak NO_2 concentrations near important sources of NO_2 such as major roadways, and given the recommendation from CASAC that the potential for instability in the 99th percentile concentration is cause for supporting a 98th percentile form, the Administrator judges it appropriate to set the form based on the 3-year average of the 98th percentile of the annual distribution of 1-hour daily maximum NO_2 concentrations.

4. Level

As discussed below and in more detail in the proposal (section II.F.4), the Administrator has considered two different approaches to setting the 1-hour NO_2 primary NAAQS. In the proposal, each of these approaches was linked with a different range of standard levels. Specifically, the Administrator proposed to set a 1-hour standard reflecting the maximum allowable NO_2 concentration anywhere in an area and to set the level of such a standard from 80 to 100 ppb. The Administrator also solicited comment on the alternative approach of setting a standard that reflects the allowable area-wide NO_2 concentration and setting the standard level from 50 to 75 ppb. This section summarizes the rationale for the Administrator's proposed approach and range of standard levels (II.F.3.a), describes the alternative approach and range of standard levels (II.F.3.b), discusses comments related to each approach and range of standard levels (II.F.3.c), and presents the Administrator's final conclusions regarding the approach and level (II.F.3.d).

a. Rationale For Proposed Decisions on Approach and Level

In assessing the most appropriate approach to setting the 1-hour standard and the most appropriate range of standard levels to propose, the Administrator considered the broad body of scientific evidence assessed in the ISA, including epidemiologic and controlled human exposure studies, as well as the results of exposure/risk analyses presented in the REA. In light of the body of available evidence and analyses, as described above, the Administrator concluded in the proposal that it is necessary to provide increased public health protection for at-risk individuals against an array of adverse respiratory health effects linked with short-term (*i.e.,* 30 minutes to 24 hours) exposures to NO_2. Such health effects have been associated with exposure to the distribution of short-term ambient NO_2 concentrations across an area, including higher short-term (*i.e.,* peak) exposure concentrations, such as those that can occur on or near major roadways and near other sources of NO_2, as well as the lower short-term exposure concentrations that can occur in areas not near major roadways or other sources of NO_2. The Administrator's proposed decisions on approach and level, as discussed in detail in the proposal (section II.F.4), are outlined below.

In considering a standard-setting approach, the Administrator was mindful in the proposal that the available evidence and analyses from the ISA and REA support the public health importance of roadway-associated NO_2 exposures. The exposure assessment described in the REA estimated that roadway-associated exposures account for the majority of exposures to peak NO_2 concentrations (REA, Figures 8–17, 8–18). The ISA concluded (section 4.3.6) that NO_2 concentrations in heavy traffic or on freeways "can be twice the residential outdoor or residential/arterial road level." In considering the potential variability in the NO_2 concentration gradient, the proposal noted that available monitoring studies suggest that NO_2 concentrations could be 30 to 100% higher than those in the same area but away from the road.[12]

[12] In addition, the air quality analyses presented in the REA estimated that on-road NO_2 concentrations are about 80% higher on average than concentrations away from the road (REA, section 7.3.2) and that NO_2 monitors within 20 m

Continued

The Administrator also considered that millions of people in the United States live, work, and/or attend school near important sources of NO_2 such as major roadways (ISA, section 4.4), and that ambient NO_2 concentrations in these locations vary depending on the distance from major roads (*i.e.,* the closer to a major road, the higher the NO_2 concentration) (ISA, section 2.5.4). Therefore, these populations, which likely include a disproportionate number of individuals in groups with higher prevalence of asthma and higher hospitalization rates for asthma (*e.g.* ethnic or racial minorities and individuals of low socioeconomic status) (ISA, section 4.4), are likely exposed to NO_2 concentrations that are higher than those occurring away from major roadways.

Given the above considerations, the Administrator proposed an approach to setting the 1-hour NO_2 primary NAAQS whereby the standard would reflect the maximum allowable NO_2 concentration anywhere in an area. In many locations, this concentration is likely to occur on or near a major roadway. EPA proposed to set the level of the standard such that, when available information regarding the concentration gradient around roads is considered, appropriate public health protection would be provided by limiting the higher short-term peak exposure concentrations expected to occur on and near major roadways, as well as the lower short-term exposure concentrations expected to occur away from those roadways. The Administrator concluded that this approach to setting the 1-hour NO_2 NAAQS would be expected to protect public health against exposure to the distribution of short-term NO_2 concentrations across an area and would provide a relatively high degree of confidence regarding the protection provided against peak exposures to higher NO_2 concentrations, such as those that can occur around major roadways. The remainder of this section discusses the proposed range of standard levels.

In considering the appropriate range of levels to propose for a standard that reflects the maximum allowable NO_2 concentration anywhere in an area, the Administrator considered the broad body of scientific evidence and exposure/risk information as well as available information on the relationship between NO_2 concentrations near roads and those away from roads. Specifically, she considered the extent to which a variety of levels would be expected to protect at-risk individuals against increased airway responsiveness, respiratory symptoms, and respiratory-related emergency department visits and hospital admissions.

After considering the scientific evidence and the exposure/risk information (*see* sections II.B, II.C, and II.F.4.a.1 through II.F.4.a.3 in the proposal), as well as the available information on the NO_2 concentration gradient around roadways (section II.A.2 above and in the proposal), the Administrator concluded that the strongest support is for a standard level at or somewhat below 100 ppb. The Administrator's rationale in reaching this proposed conclusion is provided below.

The Administrator noted that a standard level at or somewhat below 100 ppb in conjunction with the proposed approach would be expected to limit short-term NO_2 exposures to concentrations that have been reported to increase airway responsiveness in asthmatics (*i.e.,* at or above 100 ppb). While she acknowledged that exposure to NO_2 concentrations below 100 ppb could potentially increase airway responsiveness in some asthmatics, the Administrator also noted uncertainties regarding the magnitude and the clinical significance of the NO_2-induced increase in airway responsiveness, as discussed in the policy assessment chapter of the REA (section 10.3.2.1, discussed in section II.F.4.e in the proposal). Given these uncertainties, the Administrator concluded in the proposal that controlled human exposure studies provide support for limiting exposures at or somewhat below 100 ppb NO_2.

The Administrator also noted that a standard level at or somewhat below 100 ppb in conjunction with the proposed approach would be expected to maintain peak area-wide NO_2 concentrations considerably below those measured in locations where key U.S. epidemiologic studies have reported associations with more serious respiratory effects, as indicated by increased emergency department visits and hospital admissions. Specifically, the Administrator noted that 5 key U.S. studies provide evidence for such associations in locations where the 99th percentile of the distribution of 1-hour daily maximum NO_2 concentrations measured at area-wide monitors ranged from 93 to 112 ppb (Ito *et al.,* 2007; Jaffe *et al.,* 2003; Peel *et al.,* 2005; Tolbert *et al.,* 2007; and a study by the New York State Department of Health, 2006).[13] The Administrator concluded that these studies provide support for a 1-hour standard that limits the 99th percentile of the distribution of 1-hour daily maximum area-wide NO_2 concentrations to below 90 ppb (corresponds to a 98th percentile concentration of 85 ppb), and that limiting area-wide concentrations to considerably below 90 ppb would be appropriate in order to provide an adequate margin of safety. The Administrator noted that, based on available information about the NO_2 concentration gradient around roads, a standard level at or somewhat below 100 ppb set in conjunction with the proposed approach would be expected to accomplish this. Specifically, she noted that given available information regarding NO_2 concentration gradients around roads (*see* section II.A.2), a standard level at or below 100 ppb (with either a 99th or 98th percentile form) would be expected to limit peak area-wide NO_2 concentrations to approximately 75 ppb or below.[14] Therefore, the Administrator concluded that a standard level at or somewhat below 100 ppb under the proposed approach would be expected to maintain peak area-wide NO_2 concentrations well below 90 ppb across locations despite the expected variation in the NO_2 concentration gradient that can exist around roadways in different locations and over time.

The Administrator also noted that a study by Delfino provides mixed evidence for effects in a location with area-wide 98th and 99th percentile 1-hour daily maximum NO_2 concentrations of 50 and 53 ppb, respectively. In that study, NO_2 effect estimates were positive, but some reported 95% confidence limits for the odds ratio (OR) that included values less than 1.00. Given the mixed results of the Delfino study, the Administrator concluded that it may not be necessary to maintain area-wide NO_2 concentrations at or below 50 ppb to provide protection against the effects reported in epidemiologic studies.

In addition to these evidence-based considerations, the Administrator noted that a standard level at or somewhat below 100 ppb under the proposed approach would be consistent with the

of roads measure NO_2 concentrations that are, on average across locations, 40% higher than concentrations measured by monitors at least 100 m from the road (REA, compare Tables 7–11 and 7–13).

[13] The 98th percentile concentrations in these study locations ranged from 85 to 94 ppb.

[14] For a standard of 100 ppb, area-wide concentrations would be expected to range from approximately 50 ppb (assuming near-road concentrations are 100% higher than area-wide concentrations) to 75 ppb (assuming near-road concentrations are 30% higher than area-wide concentrations).

results of the exposure and risk analyses presented in the REA. As discussed in section II.C of the proposal, the results of these analyses provide support for setting a standard that limits 1-hour area-wide NO_2 concentrations to between 50 and 100 ppb. As described above, a standard level of 100 ppb that reflects the maximum allowable NO_2 concentration would be expected to maintain area-wide NO_2 concentrations at or below approximately 75 ppb. Given all of these considerations, the Administrator concluded in the proposal that a standard level at or somewhat below 100 ppb (with a 99th percentile form), in conjunction with the proposed approach, would be requisite to protect public health with an adequate margin of safety against the array of NO_2-associated health effects.

In addition to the considerations discussed above, which support setting a standard level at or somewhat below 100 ppb, the Administrator also considered the extent to which available evidence could support standard levels below 100 ppb. The Administrator concluded that the evidence could support setting the standard level below 100 ppb to the extent the following were emphasized:

- The possibility that an NO_2-induced increase in airway responsiveness could occur in asthmatics following exposures to concentrations below 100 ppb and/or the possibility that such an increase could be clinically significant.
- The mixed results reported in the study by Delfino *et al.* (2002) of an association between respiratory symptoms and the relatively low ambient NO_2 concentrations measured in the study area.

Specifically, she noted that a standard level of 80 ppb (99th percentile form), in conjunction with the proposed approach, could limit area-wide NO_2 concentrations to 50 ppb [15] and would be expected to limit exposure concentrations to below those that have been reported to increase airway responsiveness in asthmatics. For the reasons stated above, the Administrator proposed to set the level of a new 1-hour standard between 80 ppb and 100 ppb.

[15] This conclusion assumes that near-road NO_2 concentrations are 65% higher than area-wide concentrations, reflecting the mid-point in the range of 30 to 100%. Based on available information suggesting that near-road concentrations can be 30 to 100% higher than area-wide concentrations, a standard level of 80 ppb could limit area-wide concentrations to between 40 and 60 ppb.

b. Rationale for the Alternative Approach and Range of Levels

As described above, the Administrator proposed to set a 1-hour NO_2 NAAQS reflecting the maximum allowable NO_2 concentration anywhere in an area and to set the level of such a standard from 80 to 100 ppb. However, prior to the proposal, the approach of setting a 1-hour NO_2 NAAQS that reflects the maximum allowable NO_2 concentration anywhere in an area had not been discussed by EPA in the REA or considered by CASAC. Rather, the potential alternative standards discussed in the REA, and reviewed by CASAC, reflected allowable area-wide NO_2 concentrations (*i.e.,* concentrations that occur broadly across communities).

Given this, the Administrator noted in the proposal that comments received on the approach to setting the 1-hour standard (*i.e.,* from CASAC and from members of the public) could provide important new information for consideration. Therefore, the Administrator also solicited comment on the alternative approach of setting a 1-hour NO_2 primary NAAQS that would reflect the allowable area-wide NO_2 concentration, analogous to the standards evaluated in the REA, and with a level set within the range of 50 to 75 ppb. In discussing this alternative approach with a standard level from 50 to 75 ppb, the Administrator noted the following in the proposal:

- Such a standard would be expected to maintain area-wide NO_2 concentrations below peak 1-hour area-wide concentrations measured in locations where key U.S. epidemiologic studies have reported associations with respiratory-related emergency department visits and hospital admissions.
- Standard levels from the lower end of the range would be expected to limit roadway-associated exposures to NO_2 concentrations that have been reported in controlled human exposure studies to increase airway responsiveness in asthmatics. Specifically, a standard level of 50 ppb under this approach could limit near-road concentrations to between approximately 65 and 100 ppb, depending on the relationship between near-road NO_2 concentrations and area-wide concentrations.
- This alternative approach would provide relatively more confidence regarding the degree to which a specific standard level would limit area-wide NO_2 concentrations and less confidence regarding the degree to which a specific standard level would limit the peak NO_2 concentrations likely to occur near major roadways.

c. Comments on Approach and Level

In the proposal, each approach to setting the 1-hour standard, and each range of standard levels, was linked to different requirements for the design of the NO_2 monitoring network. Specifically, in conjunction with the proposed approach (*i.e.,* standard reflects the maximum allowable NO_2 concentration anywhere in an area and the level is set within the range of 80 to 100 ppb), the Administrator proposed to establish a 2-tiered monitoring network that would include monitors sited to measure the maximum NO_2 concentrations anywhere in an area, including near major roadways, and monitors sited to measure maximum area-wide NO_2 concentrations. In conjunction with the alternative approach (*i.e.,* standard reflects the allowable area-wide NO_2 concentration and the level is set within the range of 50 to 75 ppb), the Administrator solicited comment on a monitoring network that would only include area-wide NO_2 monitors. Because of these linkages in the proposal, most commenters combined their comments on the approach to setting a 1-hour standard and on the standard level with their comments on the monitoring requirements. In this section, we discuss comments from CASAC and public commenters on the approach to setting a 1-hour standard and on the standard level. Comments on the monitoring network are also discussed in this section to the extent they indicate a preference for either the proposed or alternative approach to setting the 1-hour standard. More specific comments on monitor placement and network design are discussed below in section III.B.2 and in the Response to Comments document. EPA responses to technical comments on the scientific evidence and the exposure/response information are discussed above in section II.E.2 and in the Response to Comments document. The Administrator's response to commenters' views on the approach to setting the 1-hour standard and on the standard level is embodied in the discussed in section II.F.4.d.

i. CASAC Comments on the Approach to Setting the Standard

A majority of CASAC and CASAC Panel members [16] favored the proposed approach of setting a 1-hour standard that reflects the maximum allowable

[16] CASAC members were also part of the CASAC Panel for the NO_2 NAAQS review (i.e., the Oxides of Nitrogen Primary National Ambient Air Quality Standards Panel). Therefore, references to the CASAC Panel include both CASAC members and Panel members.

NO_2 concentration anywhere in an area and linking such a standard with a 2-tiered monitoring network that would include both near-road and area-wide monitors, though CASAC did not reach consensus on this approach. Specifically, in their letter to the Administrator (Samet, 2009), CASAC stated the following:

> There was a split view on the two approaches among both CASAC and CASAC panel members with a majority of each favoring the Agency's proposed two-tiered monitoring network because they thought this approach would be more effective in limiting near-roadway exposures that may reach levels in the range at which some individuals with asthma may be adversely affected. Other members acknowledged the need for research and development of near-road monitoring data for criteria pollutants in general but favored retention of EPA's current area-wide monitoring for NO_2 regulatory purposes, due to the lack of epidemiological data based on near-roadway exposure measurements and issues related to implementing a near-road monitoring system for NO_2.

Thus, the recommendation of the majority of CASAC Panel members was based on their conclusion that the proposed approach would be more effective than the alternative at limiting near-roadway exposures to NO_2 concentrations that could adversely affect asthmatics. In addition, these CASAC Panel members noted important uncertainties with the alternative approach. Specifically, they stated the following (Samet, 2009):

> Panel members also supported the proposed two-tiered approach because basing regulations on area-wide monitoring alone was problematic. Such an approach would require EPA to embed uncertainties and assumptions about the relationship between area-wide and road-side monitoring into the area-wide standard.

A minority of CASAC Panel members expressed support for the alternative approach of setting a 1-hour standard that reflects the allowable area-wide NO_2 concentration. These CASAC Panel members concluded that there would be important uncertainties associated with the proposed approach. Specifically, they noted that the key U.S. NO_2 epidemiologic studies relied upon area-wide NO_2 concentrations. In their view, the use of area-wide concentrations in these studies introduces uncertainty into the selection of a standard level for a standard that reflects the maximum allowable NO_2 concentration anywhere in an area and that is linked with a requirement to place monitors near major roads. As a result of this uncertainty, CASAC Panel members who favored the alternative approach noted that "it would be better to set the standard on the same area-wide monitoring basis as employed in the epidemiologic studies upon which it [the standard] now relies" (Samet, 2009). These CASAC Panel members also strongly supported obtaining monitoring data near major roads, while recognizing uncertainties associated with identifying appropriate monitoring sites near roads (*see* section III.B.2 and the Response to Comments document for more discussion of CASAC's monitoring comments).

ii. Public Comments on the Approach to Setting the Standard

Consistent with the views expressed by the majority of CASAC members, a number of commenters concluded that the most appropriate approach would be to set a 1-hour standard that reflects the maximum allowable NO_2 concentration anywhere in an area and to couple that standard with a requirement that monitors be placed in locations where maximum concentrations are expected, including near major roads. This view was expressed by some State and local agencies (*e.g.,* in CA, IA, NY, TX, WA, WI), by a number of environmental organizations (*e.g.,* CAC, EDF, EJ, GASP, NRDC), by the ALA, and individual commenters. Several additional medical and public health organizations (ACCP, AMA, ATS, NADRC, NACPR) did not explicitly express a recommendation regarding the approach though these organizations did recommend that, in setting a 1-hour standard, particular attention should be paid to NO_X concentrations around major roadways. In support of their recommendation to adopt the proposed approach and to focus monitoring around major roads, these commenters generally concluded that a primary consideration should be the extent to which the NO_2 NAAQS protects at-risk populations that live and/or attend school near important sources of NO_2 such as major roads. As such, these comments supported the rationale in the proposal for setting a 1-hour standard that reflects the maximum allowable NO_2 concentration anywhere in an area.

A number of State commenters expressed the view that area-wide monitors should be used for attainment/non-attainment determinations (*e.g.,* NACAA, NESCAUM and agencies in IL, IN, MI, MS, NC, NM, SC). One State commenter (NESCAUM) agreed with EPA concerns about near-road exposures but concluded that it is premature to establish a large near-road monitoring network at this time due to uncertainty regarding the relationship between near-road and area-wide NO_2 concentrations and the variability in that relationship. NESCAUM recommended that EPA work with States to establish a targeted monitoring program in select urban areas to gather data that would inform future modifications to the monitoring network, but that "[t]he existing area-wide monitoring network should be used to identify initial nonattainment areas." Other State commenters also concluded that the most appropriate approach would be to base non-attainment determinations only on area-wide monitors. Based on their monitoring comments, many of these commenters appeared to support setting a 1-hour standard that reflects the allowable area-wide NO_2 concentration. State concerns with the proposed approach often included uncertainties associated with identifying and accessing appropriate monitor sites near major roads, as well as concerns related to implementation and cost to States (as discussed further in the Response to Comments document, the Administrator may not consider cost of implementation in decisions on a NAAQS).

One commenter (AAM) concluded that the focus of the proposed approach on NO_2 concentrations around major roadways is not justified because the REA and the proposal overstate the extent to which NO_2 concentrations near roads are higher than NO_2 concentrations farther away from the road. This conclusion is based on an analysis of 42 existing NO_2 monitors in 6 locations. Comparing NO_2 concentrations measured by these monitors, some of which are closer to roads and others of which are farther from roads, AAM concluded that "roadside monitors are not measuring high NO_2 concentrations."

We agree that there is uncertainty associated with estimates of roadway-associated NO_2 concentrations (*see* REA, sections 7.4.6 and 8.4.8.3 for detailed discussion of these uncertainties) and in identifying locations where maximum concentrations are expected to occur. However, we note that the Administrator's conclusions regarding the relationship between NO_2 concentrations near roads and those away from roads rely on multiple lines of scientific evidence and information. Specifically, the Administrator relied in the proposal on the following in drawing conclusions regarding the distribution of NO_2 concentrations across areas:

- Monitoring studies discussed in the ISA and REA that were designed to characterize the NO_2 concentration gradient around roads, which indicated that NO_2 concentrations near roads can

be approximately 30 to 100% higher than concentrations away from the road in the same area.

• Air quality and exposure analyses presented in the REA which estimate that, on average across locations, NO_2 concentrations on roads could be 80% higher than those away from roads and that roadway-associated exposures account for the majority of exposures to NO_2 concentrations at or above 100 ppb.

In contrast, the existing NO_2 monitoring network, which was the basis for the analysis submitted by AAM, was not designed to characterize the spatial gradients in NO_2 concentrations surrounding roadways. Rather, concentrations of NO_2 measured by existing monitors are likely to reflect contributions from a combination of mobile and stationary sources, with one or the other dominating depending on the proximity of these sources to the monitors. Therefore, we conclude that the analysis submitted by AAM, which does not consider other relevant lines of evidence and information, does not appropriately characterize the relationship between NO_2 concentrations near roads and those away from roads. (*See* the Response to Comments document for a more detailed discussion of AAM comments.)

In addition, we note that, although the Administrator concluded in the proposal that maximum NO_2 concentrations in many areas are likely to occur around major roads, she also recognized that maximum concentrations can occur elsewhere in an area. For this reason, she proposed to set a 1-hour NO_2 standard that reflects the maximum allowable NO_2 concentration anywhere in an area, regardless of where that maximum concentration occurs.[17] Therefore, the proposed approach to setting the standard would be expected to limit the maximum NO_2 concentrations anywhere in an area even if in some areas, as is contended by AAM, those maximum NO_2 concentrations do not occur near roads.

iii. CASAC Comments on Standard Level

In commenting on the proposal, CASAC discussed both the proposed range of standard levels (*i.e.,* 80–100 ppb) and the alternative range of standard levels (*i.e.,* 50–75 ppb). CASAC did express the consensus conclusion that if the Agency finalizes a 1-hour standard in accordance with the proposed approach (*i.e.,* standard level reflects the maximum allowable NO_2 concentration anywhere in an area), then it is appropriate to consider the proposed range of standard levels from 80 to 100 ppb. Specifically, the CASAC letter to the Administrator on the proposal (Samet, 2009) stated the following with regard to the proposed approach:

> [T]he level of the one-hour NO_2 standard should be within the range of 80–100 ppb and not above 100 ppb. In its letter of December 2, 2008, CASAC strongly voiced a consensus view that the upper end of the range should not exceed 100 ppb, based on evidence of risk at that concentration. The lower limit of 80 ppb was viewed as reasonable by CASAC; selection of a value lower than 80 ppb would represent a policy judgment based on uncertainty and the degree of public health protection sought, given the limited health-based evidence at concentrations below 100 ppb.

CASAC also recommended that this level be employed with a 98th percentile form, in order to promote the stability of the standard (*see* above for discussion of form).

iv. Public Comments on Standard Level

A number of State and local agencies and organizations expressed support for setting the level of the 1-hour NO_2 standard within the proposed range of 80 to 100 ppb. While some State and local agencies (*e.g.,* in CA, IA, MI, NY, TX) made this recommendation in conjunction with a recommendation to focus monitoring near major roads and other important sources of NO_2, a number of State commenters (*e.g.,* NACAA, NESCAUM and agencies in IL, NC, NM, TX, VA) recommended a standard level from 80 to 100 ppb in conjunction with a recommendation that only area-wide monitors be deployed for purposes of determining attainment with the standard. Based on these monitoring comments, these State commenters appear to favor an approach where a standard level from 80 to 100 ppb would reflect the allowable area-wide NO_2 concentration. As discussed above (and in more detail in section III.B.2 and the Response to Comments document), State commenters often based these recommendations on uncertainties associated with designing an appropriate national near-road monitoring network.

A number of environmental organizations (*e.g.,* CAC, EDF, EJ, GASP, NRDC) and medical/public health organizations (*e.g.,* ACCP, ALA, AMA, ATS, NACPR, NAMDRC) supported setting a standard level below 80 ppb for a standard that reflects the maximum allowable NO_2 concentration anywhere in an area. Several of these groups recommended a standard level of 50 ppb. This recommendation was typically based on the commenters' interpretation of the epidemiologic and controlled human exposure evidence, as described below.

Some of these commenters noted that the 98th percentile area-wide NO_2 concentration was below 80 ppb in the location of a single key U.S. epidemiologic study (*i.e.,* 50 ppb in study by Delfino). Given this, commenters concluded that the standard level should be set at 50 ppb. Their comments on the monitoring network generally favored a requirement to place monitors near major roads and, therefore, these commenters appeared to favor a standard level as low as 50 ppb and to recommend that such a standard level reflect the maximum allowable NO_2 concentration anywhere in an area. In their comments, the ALA, EDF, EJ, and NRDC stated the following:

> Considering the Delfino study alone on EPA's terms, that is, focusing on the 98th percentile of the 1-hour daily maximum concentrations, EPA reports a concentration of 50 ppb where asthma symptoms were observed. Based primarily on this study, EPA concluded in the REA that it was appropriate to set the lower end of the range at 50 ppb, which corresponded to the lowest-observed effects level of airway hyperresponsiveness in asthmatics. To provide the strongest public health protection, we therefore urge the level of the standard be set at 50 ppb.

In some cases, the same commenters also appeared to recommend setting a standard level below 50 ppb because mean area-wide NO_2 concentrations reported in locations of key U.S. epidemiologic studies are below this concentration. Specifically, with regard to the key U.S. epidemiologic studies, these commenters (*e.g.,* ALA, EDF, EJ, NRDC) stated the following:

> These studies clearly identify adverse health effects such as emergency room visits and hospital admissions for respiratory causes at concentrations currently occurring in the United States. Mean concentrations for all but two of these studies are about or below 50 ppb, suggesting that the standard must be set below this level to allow for a margin of safety.

The Administrator's consideration of the Delfino study as it relates to a decision on standard level is discussed below (section II.F.4.d). Regarding the recommendation to set the level below 50 ppb based on mean area-wide NO_2 concentrations in epidemiologic study

[17] To measure maximum concentrations, the Administrator proposed monitoring provisions that would require monitors within 50 meters of major roads and to allow the Regional Administrator to require additional monitors in situations where maximum concentrations would be expected to occur in locations other than near major roads (*e.g.,* due to the influence of multiple smaller roads and/or stationary sources).

locations, we note that the Administrator proposed to set a standard that reflects the maximum allowable NO_2 concentration anywhere in an area and to set the form of that standard at the upper end of the distribution of 1-hour daily maximum NO_2 concentrations.[18] As described in the proposal, such a standard, with a level from the proposed range of 80 to 100 ppb, would be expected to maintain peak area-wide NO_2 concentrations below the peak area-wide concentrations measured in locations where key U.S. epidemiologic studies have reported associations with respiratory-related emergency department visits and hospital admissions. Because reducing NO_X emissions to meet a 98th percentile NO_2 standard should lower the distribution of NO_2 concentrations, including the mean, a standard that limits the 98th percentile of the distribution of 1-hour daily maximum concentrations would also be expected to limit mean concentrations. Therefore, although we acknowledge that the relationship between peak and mean NO_2 concentrations will likely vary across locations and over time, if peak area-wide NO_2 concentrations are maintained below those in key epidemiologic study locations, mean area-wide NO_2 concentrations would also be expected to be maintained below the mean area-wide concentrations in those locations (*see* ISA, figure 2.4–13 for information on the relationship between peak and mean NO_2 concentrations).

As discussed above (section, II.E.2), a number of industry groups did not support setting a new 1-hour NO_2 standard. However, several of these groups (*e.g.,* AAM, Dow, NAM, NPRA) also concluded that, if EPA does choose to set a new 1-hour standard, the level of that standard should be above 100 ppb. As a basis for this recommendation, these groups emphasized uncertainties in the scientific evidence. Specifically, as discussed in more detail above (section II.E.2), these commenters typically concluded that available epidemiologic studies do not support the conclusion that NO_2 causes reported health effects. This was based on their assertion that the presence of co-pollutants in the ambient air precludes the identification of a specific NO_2 contribution to reported effects. As a result, these commenters recommended that a 1-hour standard should be based on the controlled human exposure evidence and that, in considering that evidence, EPA should rely on the meta-analysis of NO_2 airway responsiveness studies conducted by Goodman *et al.,* (2009) rather than the meta-analysis included in the final ISA. As described above, they concluded that in relying on the ISA meta-analysis, EPA has inappropriately relied on a new unpublished meta-analysis that has not been peer-reviewed, was not reviewed by CASAC, and was not conducted in a transparent manner. EPA recognizes the uncertainties in the scientific evidence that are discussed by these industry commenters; however, we strongly disagree with their conclusions regarding the implications of these uncertainties for decisions on the NO_2 NAAQS. These comments, and EPA's responses, are discussed in detail above (section II.E.2) and in the Response to Comments document and are summarized briefly below.

As noted in section II.E.2, we agree that the presence of co-pollutants in the ambient air complicates the interpretation of epidemiologic studies; however, our conclusions regarding causality are based on consideration of the broad body of epidemiologic studies (including those employing multi-pollutant models) as well as animal toxicological and controlled human exposure studies. The ISA concluded that this body of evidence "supports a direct effect of short-term NO_2 exposure on respiratory morbidity at ambient concentrations below the current NAAQS level" (ISA, p. 5–16). In addition, the ISA (p. 5–15) concluded the following:

> [T]he strongest evidence for an association between NO_2 exposure and adverse human health effects comes from epidemiologic studies of respiratory symptoms and ED visits and hospital admissions. These new findings were based on numerous studies, including panel and field studies, multipollutant studies that control for the effects of other pollutants, and studies conducted in areas where the whole distribution of ambient 24-h avg NO_2 concentrations was below the current NAAQS level of 0.053 ppm (53 ppb) (annual average).

Given that epidemiologic studies provide the strongest support for an association between NO_2 and respiratory morbidity, and that a number of these studies controlled for the presence of other pollutants with multi-pollutant models (in which NO_2 effect estimates remained robust), we disagree that NO_2 epidemiologic studies should not be used to inform a decision on the level of the 1-hour NO_2 standard.

In addition, we agree that uncertainty exists regarding the extent to which the NO_2-induced increase in airway responsiveness is adverse (REA, section 10.3.2.1); however, as discussed in detail above (section II.E.2), we disagree with the conclusion by many industry commenters that this effect is not adverse in asthmatics following exposures from 100 to 600 ppb NO_2. Specifically, we do not agree that the approach taken in the study by Goodman *et al.* (2009), which was used by many industry commenters to support their conclusions, was appropriate. The authors of the Goodman study used data from existing NO_2 studies to characterize the dose-response relationship of NO_2 and airway responsiveness and to calculate the magnitude of the NO_2 effect. Given the protocol differences in existing studies of NO_2 and airway responsiveness, we do not agree that it is appropriate to base such an analysis on these studies.

The Administrator's consideration of these uncertainties, within the context of setting a standard level, is discussed in the next section.

d. Conclusions on Approach and Standard Level

Having carefully considered the public comments on the appropriate approach and level for a 1-hour NO_2 standard, as discussed above, the Administrator believes the fundamental conclusions reached in the ISA and REA remain valid. In considering the approach, the Administrator continues to place primary emphasis on the conclusions of the ISA and the analyses of the REA, both of which focus attention on the importance of roadways in contributing to peak NO_2 exposures, given that roadway-associated exposures can dominate personal exposures to NO_2. In considering the level at which the 1-hour primary NO_2 standard should be set, the Administrator continues to place primary emphasis on the body of scientific evidence assessed in the ISA, as summarized above in section II.B, while viewing the results of exposure and risk analyses, discussed above in section II.C, as providing information in support of her decision.

With regard to her decision on the approach to setting the 1-hour standard, the Administrator continues to judge it appropriate to provide increased public health protection for at-risk individuals against an array of adverse respiratory health effects linked with short-term exposures to NO_2, where such health effects have been associated with exposure to the distribution of short-term ambient NO_2 concentrations across

[18] As discussed above, the Administrator has selected the 98th percentile as the form for the new 1-hour NO_2 standard.

an area. In protecting public health against exposure to the distribution of short-term NO_2 concentrations across an area, the Administrator is placing emphasis on providing a relatively high degree of confidence regarding the protection provided against exposures to peak concentrations of NO_2, such as those that can occur around major roadways. Available evidence and information suggest that roadways account for the majority of exposures to peak NO_2 concentrations and, therefore, are important contributors to NO_2-associated public health risks. In reaching this conclusion, the Administrator notes the following:

- Mobile sources account for the majority of NO_X emissions (ISA, Table 2.2–1).
- The ISA stated that NO_2 concentrations in heavy traffic or on freeways "can be twice the residential outdoor or residential/arterial road level," that "exposure in traffic can dominate personal exposure to NO_2," and that "NO_2 levels are strongly associated with distance from major roads (*i.e.,* the closer to a major road, the higher the NO_2 concentration)" (ISA, sections 2.5.4, 4.3.6).
- The exposure assessment presented in the REA estimated that roadway-associated exposures account for the majority of exposures to peak NO_2 concentrations (REA, Figures 8–17, 8–18).
- Monitoring studies suggest that NO_2 concentrations near roads can be considerably higher than those in the same area but away from roads (*e.g.,* by 30–100%, *see* section II.A.2).
- In their comments on the approach to setting the 1-hour NO_2 standard, the majority of CASAC Panel members emphasized the importance of setting a standard that limits roadway-associated exposures to NO_2 concentrations that could adversely affect asthmatics. These CASAC Panel members favored the proposed approach, including its focus on roads.

In addition, the Administrator notes that a considerable fraction of the population resides, works, or attends school near major roadways or other sources of NO_2 and that these populations are likely to have increased exposure to NO_2 (ISA, section 4.4). Based on data from the 2003 American Housing Survey, approximately 36 million individuals live within 300 feet (~90 meters) of a four-lane highway, railroad, or airport (ISA, section 4.4).[19] Furthermore, in California, 2.3% of schools with a total enrollment of more than 150,000 students were located within approximately 500 feet of high-traffic roads (ISA, section 4.4). Of this population, which likely includes a disproportionate number of individuals in groups with a higher prevalence of asthma and higher hospitalization rates for asthma (*e.g.,* ethnic or racial minorities and individuals of low socioeconomic status) (ISA, section 4.4), asthmatics and members of other susceptible groups (*e.g.,* children, elderly) will have the greatest risks of experiencing health effects related to NO_2 exposure. In the United States, approximately 10% of adults and 13% of children have been diagnosed with asthma, and 6% of adults have been diagnosed with COPD (ISA, section 4.4).

In considering the approach to setting the 1-hour standard, the Administrator also notes that concerns with the proposed approach expressed by the minority of CASAC Panel members included concern with the uncertainty in the relationship between near-road and area-wide NO_2 concentrations, given that U.S. epidemiologic studies have been based on concentrations measured at area-wide monitors. However, as discussed by the majority of CASAC Panel members, a similar uncertainty would be involved in setting a standard with the alternative approach (Samet, 2009). The Administrator agrees with the majority of CASAC Panel members and concludes that uncertainty in the relationship between near-road and area-wide NO_2 concentrations should be considered regardless of the approach selected to set the standard. She recognizes that this uncertainty can and should be taken into consideration when considering the level of the standard.

In drawing conclusions on the approach, the Administrator has considered the extent to which each approach, in conjunction with the ranges of standard levels discussed in the proposal, would be expected to limit the distribution of NO_2 concentrations across an area and, therefore, would be expected to protect against risks associated with NO_2 exposures. Specifically, she has considered the extent to which a standard set with each approach would be expected to limit maximum NO_2 concentrations and area-wide NO_2 concentrations.

With regard to expected maximum concentrations, the Administrator notes the following:

- A standard reflecting the maximum allowable NO_2 concentration anywhere in an area would provide a relatively high degree of confidence regarding the level of protection provided against peak exposures, such as those that can occur on or near major roadways. A standard level from anywhere within the proposed range (*i.e.,* 80 to 100 ppb) would be expected to limit exposures to NO_2 concentrations reported to increase airway responsiveness in asthmatics.
- A standard reflecting the allowable area-wide NO_2 concentration would not provide a high degree of confidence regarding the extent to which maximum NO_2 concentrations would be limited. Maximum NO_2 concentrations would be expected to be controlled to varying degrees across locations and over time depending on the NO_2 concentration gradient around roads. Given the expected variability in gradients across locations and over time, most standard levels within the range considered in the proposal with this option (*i.e.,* 50 to 75 ppb) would not be expected to consistently limit the occurrence of NO_2 concentrations that have been reported to increase airway responsiveness in asthmatics.

With regard to expected area-wide concentrations, the Administrator notes the following:

- The extent to which a standard reflecting the maximum allowable NO_2 concentration anywhere in an area would be expected to limit area-wide NO_2 concentrations would vary across locations, *e.g.,* depending on the NO_2 concentration gradient around roads. However, in conjunction with a standard level from anywhere within the proposed range (*i.e.,* 80–100 ppb), such an approach would be expected to maintain area-wide NO_2 concentrations below those measured in locations where key U.S. epidemiologic studies have reported associations between ambient NO_2 and respiratory-related hospital admissions and emergency department visits (based on available information regarding the NO_2 concentration gradient around roads as discussed below).
- A standard reflecting the maximum allowable area-wide NO_2 concentration would provide a relatively high degree of certainty regarding the extent to which area-wide NO_2 concentrations are limited. In conjunction with a standard level from anywhere within the range of

[19] The most current American Housing Survey *(http://www.census.gov/hhes/www/housing/ahs/ahs.html)* is from 2007 and lists a higher fraction of housing units within the 300 foot boundary. According to Table 1A–6 from that report *(http://www.census.gov/hhes/www/housing/ahs/ahs07/tab1a-6.pdf),* out of 128.2 million total housing units in the United States, about 20 million were reported by the surveyed occupant or landlord as being within 300 feet of a 4-or-more lane highway, railroad, or airport. That constitutes 15.6% of the total housing units in the U.S. Assuming equal distributions, with a current population of 306.3 million, that means that there would be 47.8 million people meeting the 300 foot criteria.

levels discussed in the proposal (*i.e.,* 50–75 ppb) with this alternative approach, such a standard would be expected to maintain area-wide NO_2 concentrations below those measured in locations where key U.S. epidemiologic studies have reported associations between ambient NO_2 and respiratory-related hospital admissions and emergency department visits.

Given the above considerations, the Administrator concludes that both approaches, in conjunction with appropriate standard levels, would be expected to maintain area-wide NO_2 concentrations below those measured in locations where key U.S. epidemiologic studies have reported associations between ambient NO_2 and respiratory-related hospital admissions and emergency department visits. In contrast, the Administrator concludes that only a standard reflecting the maximum allowable NO_2 concentration anywhere in an area, in conjunction with an appropriate standard level, would be expected to consistently limit exposures, across locations and over time, to NO_2 concentrations reported to increase airway responsiveness in asthmatics. After considering the evidence and uncertainties, and the advice of the CASAC Panel, the Administrator judges that the most appropriate approach to setting a 1-hour standard to protect against the distribution of short-term NO_2 concentrations across an area, including the higher concentrations that can occur around roads and result in elevated exposure concentrations, is to set a standard that reflects the maximum allowable NO_2 concentration anywhere in an area.

In considering the level of a 1-hour NO_2 standard that reflects the maximum allowable NO_2 concentration anywhere in an area, the Administrator notes that there is no bright line clearly directing the choice of level. Rather, the choice of what is appropriate is a public health policy judgment entrusted to the Administrator. This judgment must include consideration of the strengths and limitations of the evidence and the appropriate inferences to be drawn from the evidence and the exposure and risk assessments. Specifically, the Administrator notes the following:

- Controlled human exposure studies have reported that various NO_2 exposure concentrations increased airway responsiveness in mostly mild asthmatics (section II above and II.B.1.d in proposal). These studies can inform an evaluation of the risks associated with exposure to specific NO_2 concentrations, regardless of where those exposures occur in an area. Because concentrations evaluated in controlled human exposure studies are at the high end of the distribution of ambient NO_2 concentrations (ISA, section 5.3.2.1), these studies most directly inform consideration of the risks associated with exposure to peak short-term NO_2 concentrations.
- Epidemiologic studies (section II.B.1.a and b) conducted in the United States have reported associations between ambient NO_2 concentrations measured at area-wide monitors in the current network and increased respiratory symptoms, emergency department visits, and hospital admissions. Area-wide monitors in the urban areas in which these epidemiologic studies were conducted are not sited in locations where localized peak concentrations are likely to occur. Thus, they do not measure the full range of ambient NO_2 concentrations across the area. Rather, the area-wide NO_2 concentrations measured by these monitors are used as surrogates for the distribution of ambient NO_2 concentrations across the area, a distribution that includes NO_2 concentrations both higher than (*e.g.,* around major roadways) and lower than the area-wide concentrations measured in study locations. Epidemiologic studies evaluate whether area-wide NO_2 concentrations are associated with the risk of respiratory morbidity. Available information on NO_2 concentration gradients around roadways can inform estimates of the relationship between the area-wide NO_2 concentrations measured in epidemiologic study locations and the higher NO_2 concentrations likely to have occurred around roads in those locations, which can then inform the decision on the level of a standard reflecting the maximum allowable NO_2 concentration anywhere in an area.
- The risk and exposure analyses presented in the REA provide information on the potential public health implications of setting standards that limit area-wide NO_2 concentrations to specific levels. While the Administrator acknowledges the uncertainties associated with these analyses which, as discussed in the REA, could result in either over- or underestimates of NO_2-associated health risks, she judges that these analyses are informative for considering the relative levels of public health protection that could be provided by different standards.

The Administrator's consideration of the controlled human exposure evidence, epidemiologic evidence, and exposure/risk information are discussed below specifically with regard to a decision on the level of a standard that reflects the maximum allowable NO_2 concentration anywhere in an area.

In considering the potential for controlled human exposure studies of NO_2 and airway responsiveness to inform a decision on standard level, the Administrator notes the following:

- NO_2-induced increases in airway responsiveness, as reported in controlled human exposure studies, are logically linked to the adverse respiratory effects that have been reported in NO_2 epidemiologic studies.
- The meta-analysis of controlled human exposure data in the ISA reported increased airway responsiveness in a large percentage of asthmatics at rest following exposures at and above 100 ppb NO_2, the lowest NO_2 concentration for which airway responsiveness data are available in humans.
- This meta-analysis does not provide any evidence of a threshold below which effects do not occur. The studies included in the meta-analysis evaluated primarily mild asthmatics while more severely affected individuals could respond to lower concentrations. Therefore, it is possible that exposure to NO_2 concentrations below 100 ppb could increase airway responsiveness in some asthmatics.

In considering the evidence, the Administrator recognizes that the NO_2-induced increases in airway responsiveness reported for exposures to NO_2 concentrations at or above 100 ppb could be adverse for some asthmatics. However, she also notes that important uncertainties exist with regard to the extent to which NO_2-induced increases in airway responsiveness are adverse. Specifically, she notes the following with regard to these uncertainties:

- The magnitude of the NO_2-induced increase in airway responsiveness, and the extent to which it is adverse, cannot be quantified from the ISA meta-analysis (REA, section 10.3.2.1).
- The NO_2-induced increase in airway responsiveness in resting asthmatics was typically not accompanied by increased respiratory symptoms, even following exposures to NO_2 concentrations well above 100 ppb (ISA, section 3.1.3.3).
- The increase in airway responsiveness that was reported for resting asthmatics was not present in exercising asthmatics (ISA, Table 3.1–3).

Taking into consideration all of the above, the Administrator concludes that existing evidence supports the conclusion that the NO_2-induced increase in airway responsiveness at or above 100 ppb presents a risk of adverse

effects for some asthmatics, especially those with more serious (*i.e.,* more than mild) asthma. The Administrator notes that the risks associated with increased airway responsiveness cannot be fully characterized by these studies, and thus she is not able to determine whether the increased airway responsiveness experienced by asthmatics in these studies is an adverse health effect. However, based on these studies the Administrator concludes that asthmatics, particularly those suffering from more severe asthma, warrant protection from the risk of adverse effects associated with the NO_2-induced increase in airway responsiveness. Therefore, the Administrator concludes that the controlled human exposure evidence supports setting a standard level no higher than 100 ppb to reflect a cautious approach to the uncertainty regarding the adversity of the effect. However, those uncertainties lead her to also conclude that this evidence does not support setting a standard level lower than 100 ppb.

In considering the more serious health effects reported in NO_2 epidemiologic studies, as they relate to the level of a standard that reflects the maximum allowable NO_2 concentration anywhere in an area, the Administrator notes the following:

• A cluster of 5 key U.S. epidemiologic studies (Ito *et al.,* 2007; Jaffe *et al.,* 2003; Peel *et al.,* 2005; Tolbert *et al.,* 2007; and a study by the New York State Department of Health, 2006) provide evidence for associations between NO_2 and respiratory-related emergency department visits and hospital admissions in locations where 98th percentile 1-hour daily maximum NO_2 concentrations measured at area-wide monitors ranged from 85 to 94 ppb. The Administrator judges it appropriate to place substantial weight on this cluster of key U.S. epidemiologic studies in selecting a standard level, as they are a group of studies that reported positive, and often statistically significant, associations between NO_2 and respiratory morbidity in multiple cities across the United States.[20]

• A single study (Delfino *et al.,* 2002) provides mixed evidence for NO_2 effects (*i.e.,* respiratory symptoms) in a location with a 98th percentile 1-hour daily maximum NO_2 concentration, as measured by an area-wide monitor, of 50 ppb. In that study, most of the reported NO_2 effect estimates were positive, but not statistically significant. Given the variability in the NO_2 effect estimates in this study, as well as the lack of studies in other locations with similarly low NO_2 concentrations, the Administrator judges it appropriate to place limited weight on this study, compared to the cluster of 5 studies as noted above.

Given these considerations, the Administrator concludes that the epidemiologic evidence provides strong support for setting a standard that limits the 98th percentile of the distribution of 1-hour daily maximum area-wide NO_2 concentrations to below 85 ppb. This judgment takes into account the determinations in the ISA, based on a much broader body of evidence, that there is a likely causal association between exposure to NO_2 and the types of respiratory morbidity effects reported in these studies. Given the considerations discussed above, the Administrator judges that it is not necessary, based on existing evidence, to set a standard that maintains peak area-wide NO_2 concentrations to below 50 ppb.

In considering specific standard levels supported by the epidemiologic evidence, the Administrator notes that a level of 100 ppb, for a standard reflecting the maximum allowable NO_2 concentration anywhere in the area, would be expected to maintain area-wide NO_2 concentrations well below 85 ppb, which is the lowest 98th percentile concentration in the cluster of 5 studies. With regard to this, she specifically notes the following:

• If NO_2 concentrations near roads are 100% higher than concentrations away from roads, a standard level of 100 ppb would limit area-wide concentrations to approximately 50 ppb.

• If NO_2 concentrations near roads are 30% higher than concentrations away from roads, a standard level of 100 ppb would limit area-wide concentrations to approximately 75 ppb.

The Administrator has also considered the NO_2 exposure and risk information within the context of the above conclusions on standard level. Specifically, she notes that the results of exposure and risk analyses were interpreted as providing support for limiting area-wide NO_2 concentrations to no higher than 100 ppb. Specifically, these analyses estimated that a standard that limits area-wide NO_2 concentrations to approximately 100 ppb or below would be expected to result in important reductions in respiratory risks, relative to the level of risk permitted by the current annual standard alone. As discussed above, a standard reflecting the maximum allowable NO_2 concentration with a level of 100 ppb would be expected to maintain area-wide NO_2 concentrations to within a range of approximately 50 to 75 ppb. Given this, the Administrator concludes that a standard level of 100 ppb is consistent with conclusions based on the NO_2 exposure and risk information.

Finally, the Administrator notes that a standard level of 100 ppb is consistent with the consensus recommendation of CASAC.

Given the above considerations and the comments received on the proposal, the Administrator determines that the appropriate judgment, based on the entire body of evidence and information available in this review, and the related uncertainties, is a standard level of 100 ppb (for a standard that reflects the maximum allowable NO_2 concentration anywhere in an area). She concludes that such a standard, with the averaging time and form discussed above, will provide a significant increase in public health protection compared to that provided by the current annual standard alone and would be expected to protect against the respiratory effects that have been linked with NO_2 exposures in both controlled human exposure and epidemiologic studies. Specifically, she concludes that such a standard will limit exposures at and above 100 ppb for the vast majority of people, including those in at-risk groups, and will maintain maximum area-wide NO_2 concentrations well below those in locations where key U.S. epidemiologic studies have reported that ambient NO_2 is associated with clearly adverse respiratory health effects, as indicated by increased hospital admissions and emergency department visits.

In setting the standard level at 100 ppb rather than a lower level, the Administrator notes that a 1-hour standard with a level lower than 100 ppb would only result in significant further public health protection if, in fact, there is a continuum of serious, adverse health risks caused by exposure to NO_2 concentrations below 100 ppb and/or associated with area-wide NO_2 concentrations well-below those in locations where key U.S. epidemiologic studies have reported associations with respiratory-related emergency department visits and hospital admissions. Based on the available evidence, the Administrator does not believe that such assumptions are warranted. Taking into account the uncertainties that remain in interpreting the evidence from available controlled human exposure and epidemiologic studies, the Administrator notes that the likelihood of obtaining benefits to public health with a standard set below

[20] Some of these studies also included susceptible and vulnerable populations (*e.g.,* children in Peel *et al.* (2005); poor and minority populations in Ito *et al.,* 2007).

100 ppb decreases, while the likelihood of requiring reductions in ambient concentrations that go beyond those that are needed to protect public health increases.

Therefore, the Administrator judges that a standard reflecting the maximum allowable NO_2 concentration anywhere in an area set at 100 ppb is sufficient to protect public health with an adequate margin of safety, including the health of at-risk populations, from adverse respiratory effects that have been linked to short-term exposures to NO_2 and for which the evidence supports a likely causal relationship with NO_2 exposures. The Administrator does not believe that a lower standard level is needed to provide this degree of protection. These conclusions by the Administrator appropriately consider the requirement for a standard that is neither more nor less stringent than necessary for this purpose and recognizes that the CAA does not require that primary standards be set at a zero-risk level or to protect the most sensitive individual, but rather at a level that reduces risk sufficiently so as to protect the public health with an adequate margin of safety.

G. Annual Standard

In the proposal, the Administrator noted that some evidence supports a link between long-term exposures to NO_2 and adverse respiratory effects and that CASAC recommended in their comments prior to the proposal that, in addition to setting a new 1-hour standard to increase public health protection, the current annual standard be retained. CASAC's recommendation was based on the scientific evidence and on their conclusion that a 1-hour standard might not provide adequate protection against exposure to long-term NO_2 concentrations (Samet, 2008b).

With regard to an annual standard, CASAC and a large number of public commenters (*e.g.,* NACAA, NESCAUM; agencies from States including CA, IN, MO, NC, NY, SC, TX, VA; Tribal organizations including Fon du Lac and the National Tribal Air Organization; environmental/medical/public health groups including ACCP, ALA, AMA, ATS, CAC, EDF, EJ, GASP, NACPR, NAMDRC, NRDC) agreed with the proposed decision to maintain an annual standard, though their recommendations with regard to the level of that annual standard differed (*see* below).

As noted above, CASAC recommended "retaining the current standard based on the annual average" based on the "limited evidence related to potential long-term effects of NO_2 exposure and the lack of strong evidence of no effect" and that "the findings of the REA do not provide assurance that a short-term standard based on the one-hour maximum will necessarily protect the population from long-term exposures at levels potentially leading to adverse health effects" (Samet, 2008b). A number of State agencies and organizations also recommended maintaining the current level of the annual standard (*i.e.,* 53 ppb). This recommendation was based on the conclusion that, while some evidence supports a link between long-term NO_2 exposures and adverse respiratory effects, that evidence is not sufficient to support a standard level either higher or lower than the current level. In addition, a number of industry groups (*e.g.,* AAM, API, Dow, INGAA, UARG) recommended retaining the level of the current annual standard but, as described above, did so within the context of a recommendation that EPA should not set a new 1-hour standard.

In contrast, some environmental organizations and medical/public health organizations as well as a small number of States (*e.g.,* ALA, EDF, EJ, NRDC, and organizations in CA) recommended setting a lower level for the annual standard. These commenters generally supported their recommendation by pointing to the State of California's annual standard of 30 ppb and to studies where long-term ambient NO_2 concentrations have been associated with adverse respiratory effects such as impairments in lung function growth.

As discussed above (II.B.3), the evidence relating long-term NO_2 exposures to adverse health effects was judged in the ISA to be either "suggestive but not sufficient to infer a causal relationship" (respiratory morbidity) or "inadequate to infer the presence or absence of a causal relationship" (mortality, cancer, cardiovascular effects, reproductive/developmental effects) (ISA, sections 5.3.2.4–5.3.2.6). In the case of respiratory morbidity, the ISA (section 5.3.2.4) concluded that "The high correlation among traffic-related pollutants made it difficult to accurately estimate the independent effects in these long-term exposure studies." Given these uncertainties associated with the role of long-term NO_2 exposures in causing the reported effects, the Administrator concluded in the proposal that, consistent with the CASAC recommendation, existing evidence is not sufficient to justify setting an annual standard with either a higher or lower level than the current standard. Commenters have not submitted any new analyses or information that would change this conclusion. Therefore, the Administrator does not agree with the commenters who recommended a lower level for the annual standard.

The Administrator judges that her conclusions in the proposal regarding the annual standard remain appropriate. Specifically, she continues to agree with the conclusion that, though some evidence does support the need to limit long-term exposures to NO_2, the existing evidence for adverse health effects following long-term NO_2 exposures does not support either increasing or decreasing the level of the annual standard. In light of this and considering the recommendation from CASAC to retain the current level of the annual standard, the Administrator judges it appropriate to maintain the level of the annual standard at 53 ppb.

H. Summary of Final Decisions on the Primary NO_2 Standard

For the reasons discussed above, and taking into account information and assessments presented in the ISA and REA, the advice and recommendations of the CASAC, and public comments, the Administrator has decided to revise the existing primary NO_2 standard. Specifically, the Administrator has determined that the current annual standard by itself is not requisite to protect public health with an adequate margin of safety. In order to provide protection for asthmatics and other at-risk populations against an array of adverse respiratory health effects related to short-term NO_2 exposure, the Administrator is establishing a short-term NO_2 standard defined by the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum NO_2 concentrations. She is setting the level of this standard at 100 ppb, which is to reflect the maximum allowable NO_2 concentration anywhere in an area. In addition to setting a new 1-hour standard, the Administrator retains the current annual standard with a level of 53 ppb. The new 1-hour standard, in combination with the annual standard, will provide protection for susceptible groups against adverse respiratory health effects associated with short-term exposures to NO_2 and effects potentially associated with long-term exposures to NO_2.

III. Amendments to Ambient Monitoring and Reporting Requirements

The EPA is finalizing several changes to the ambient air monitoring, reporting, and network design requirements for the NO_2 NAAQS. This section discusses the changes we are finalizing which are intended to support the proposed 1-

hour NAAQS and retention of the current annual NAAQS as discussed in Section II. Ambient NO_2 monitoring data are used to determine whether an area is in violation of the NO_2 NAAQS. Ambient NO_2 monitoring data are collected by State, local, and Tribal monitoring agencies ("monitoring agencies") in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58.

A. Monitoring Methods

We are finalizing the proposed changes regarding the NO_2 Federal Reference Method (FRM) or Federal Equivalent Method (FEM) analyzers. Specifically, we are continuing to use the NO_2 chemiluminescence FRM and are finalizing the requirement that any NO_2 FRM or FEM used for making primary NAAQS decisions must be capable of providing hourly averaged concentration data. The following paragraphs provide background and rationale for the continued use of the chemiluminescence FRM and the decision to finalize the proposed changes.

1. Chemiluminescence FRM and Alternative Methods

The current monitoring method in use by most State and local monitoring agencies is the gas-phase chemiluminescence FRM (40 CFR Part 50, Appendix F), which was implemented into the NO_2 monitoring network in the early 1980s. EPA did not propose to discontinue using the chemiluminescence FRM, although we received some comments from industry (Alliance of Automobile Manufacturers, Edison Electric, and the National Petrochemical and Refiners Association) raising concerns about using a method that is subject to known interferences from certain species of oxides of nitrogen known as NO_Z. Important components of ambient NO_Z include nitrous acid (HNO_2), nitric acid (HNO_3), and the peroxyacetyl nitrates (PANs).

The issue of concern in public comments is that the reduction of NO_2 to NO on the MoO_X converter substrate used in chemiluminescence FRMs is not specific to NO_2; hence, chemiluminescence method analyzers are subject to varying interferences produced by the presence in the air sample of the NO_Z species listed above and others occurring in trace amounts in ambient air. This interference is often termed a "positive artifact" in the reported NO_2 concentration since the presence of NO_Z results in an over-estimate in the reported measurement of the actual ambient NO_2 concentration. This interference by NO_Z compounds has long been known and evaluated (Fehsenfeld *et al.,* 1987; Nunnermacker *et al.,* 1998; Parrish and Fehsenfeld, 2000; McClenny *et al.,* 2002; U.S. Environmental Protection Agency, 1993, 2006a). Further, as noted in the ISA (ISA Section 2.3), it appears that interference by NO_Z on chemiluminescence FRMs is not more than 10 percent of the reported NO_2 concentration during most or all of the day during winter (cold temperatures), but larger interference ranging up to 70 percent can be found during summer (warm temperatures) in the afternoon at sites away and downwind from strong emission sources.

The EPA acknowledges that the NO_Z interference in the reported NO_2 concentrations collected well downwind of NO_X source areas and in relatively remote areas away from concentrated point, area, or mobile sources is significantly larger than the NO_Z interference in NO_2 measurements taken in urban cores or other areas with fresh NO_X emissions. To meet the primary objective of monitoring maximum NO_2 concentrations in an area, the EPA is requiring NO_2 monitors to be placed in locations of the expected highest concentrations, not in relatively remote areas away from NO_X sources. The required monitors resulting from the network design discussed below in Section III.B will require monitors to be placed near fresh NO_X sources or in areas of dense NO_X emissions, where NO_2 concentrations are expected to be at a maximum, and interference from NO_Z species is at a minimum. Therefore, EPA believes that the positive artifact issue, although present, is small, relative to the actual NO_2 being measured. As a result EPA believes the chemiluminescence FRM is suitable for continued use in the ambient NO_2 monitoring network, as the potential positive bias from NO_Z species is not significant enough to discontinue using the chemiluminescence FRM.

EPA also received support from some industry groups (*e.g.* Savannah River Nuclear Solutions, Teledyne API, and the Utility Air Regulatory Groups) and States (*e.g.,* MODEQ and NCDENR) to further the development of alternative methods in determining NO_2 concentrations. Such alternative methods include the photolytic-chemiluminescence method and cavity ring-down spectroscopy. As a result, EPA will continue working with commercial and industrial vendors, to identify and evaluate such new technologies. These efforts may include field testing instruments and further characterizing methods in a laboratory setting to assess their potential as future reference or equivalent methods, and their role in more directly measuring NO_2.

2. Allowable FRM and FEMs for Comparison to the NAAQS

The current CFR language does not prohibit the use of any particular NO_2 FRM or FEM to be used in comparison to the standard.[21] There are designated wet chemical methods that are only able to report ambient concentration values averaged across multiple hours. With the establishment of a 1-hour NAAQS, any FRM or FEM which is a wet chemical based method would not be appropriate for use in determining compliance of the 1-hour NAAQS because they are unable to report hourly data. EPA addressed this issue by proposing and finalizing that only those methods capable of providing 1-hour measurements will be comparable to the NAAQS.

a. Proposed Changes to FRM and FEMs That May Be Compared to the NAAQS

EPA proposed that only those FRMs or FEMs that are capable of providing hourly averaged concentration data may be used for comparison to the NAAQS.

b. Comments

EPA received comments from some State and industry groups (*e.g.* Missouri, North Carolina, and Air Quality Research and Logistics) supporting the proposed approach to only allowing those FRMs or FEMs that are capable of providing hourly averaged concentration data may be used for comparison to both the annual and 1-hour NAAQS, and did not receive any public comments that objected to the proposed approach.

c. Decisions on Allowable FRM and FEMs for Comparison to the NAAQS

Accordingly, EPA is finalizing the proposed changes to 40 CFR Part 58 Appendix C to allow only data from FRM or FEMs that are capable of providing hourly data to be used for comparison to both the annual and 1-hour NAAQS.

B. Network Design

With the establishment of a 1-hour NO_2 NAAQS intended to limit exposure to maximum concentrations that may occur anywhere in an area, EPA recognizes that the data from the current NO_2 network is inadequate to fully assess compliance with the revised

[21] A list of approved FRM and FEMs is maintained by EPA's Office of Research and Development, and can be found at: *http://www.epa.gov/ttn/amtic/files/ambient/criteria/reference-equivalent-methods-list.pdf.*

NAAQS. As a result, EPA is promulgating new NO_2 network design requirements. The following sections provide background, rationale, and details for the final changes to the NO_2 network design requirements.

1. Two-Tiered Network Design

A two-tiered monitoring network is appropriate for the NO_2 NAAQS because one tier (the near-road network) reflects the much higher NO_2 concentrations that occur near-road and the second-tier (area-wide) characterizes the NO_2 concentrations that occur in a larger area such as neighborhood or urban areas. The ISA (Section 2.5.4 and 4.3.6) stated that NO_2 concentrations in heavy traffic or on freeways "can be twice the residential outdoor or residential/arterial road level," that "exposure in traffic can dominate personal exposure to NO_2," and that "NO_2 levels are strongly associated with distance from major roads (*i.e.,* the closer to a major road, the higher the NO_2 concentration)." The exposure assessment presented in the REA estimated that roadway-associated exposures account for the majority of exposures to peak NO_2 concentrations (REA, Figures 8–17, 8–18). Monitoring studies suggest that NO_2 concentrations near roads can be considerably higher than those in the same area but away from the road (*e.g.,* by 30–100%, *see* section II.A.2), where pollutants typically display peak concentrations on or immediately adjacent to roads, producing a gradient in pollutant concentrations where concentrations decrease with increasing distance from roads. Since the intent of the revised NAAQS is to limit exposure to peak NO_2 concentrations that occur anywhere in an area, monitors intended to measure the maximum allowable NO_2 concentration in an area should include measurements of the peak concentrations that occur on and near roads due to on-road mobile sources. The first tier of the network design, which focuses monitoring near highly trafficked roads in urban areas where peak NO_2 concentrations are likely to occur, is intended to measure maximum concentrations anywhere in an area, particularly those due to on-road mobile sources since roadway-associated exposures account for the majority of exposures to peak NO_2 concentrations. The basis for the second tier of the network design is to measure the highest area-wide concentrations to characterize the wider area impact of a variety of NO_2 sources on urban populations. Area-wide monitoring of NO_2 also serves to maintain continuity in collecting data to inform long-term pollutant concentration trends analysis and support ongoing health and scientific research.

This section discusses the two-tier network design approach compared to the alternative network design which was also presented for comment in conjunction with a solicitation for comment on an alternative NAAQS. The alternative network design concept was based entirely on requiring only monitors that would be considered area-wide, while not requiring any near-road monitoring sites. The details of the two-tier network design, including how many monitors are required, where they are to be located, and the related siting criteria are discussed in subsequent sections.

a. Proposed Two-Tier Network Design

EPA proposed a two-tier network design composed of (1) near-road monitors which would be placed in locations of expected maximum 1-hour NO_2 concentrations near heavily trafficked roads in urban areas and (2) monitors located to characterize areas with the highest expected NO_2 concentrations at the neighborhood and larger spatial scales (also referred to as "area-wide" monitors). As an alternative, and in conjunction with a solicitation for comment on an alternative NAAQS, EPA solicited comment on a network comprised of only area-wide monitors.

b. Comments

EPA received many comments on the overall two-tier network design, with those who made statements with a relatively clear position on the issue generally falling into four categories: (1) Those who support the adoption of the proposed two-tier design approach, (2) those who support the adoption of the two-tier concept, but with modifications, (3) those who only supported the adoption of the alternative network design, and (4) those who encourage EPA to commit to further research of the near-road environment by monitoring near-roads, but not to use near-road data for regulatory purposes, and therefore support the alternative network design in which EPA solicited comment on a network design composed only of area-wide monitors.

Those commenters who generally supported the proposed two-tier network, included CASAC (while there was not a consensus, a majority were in support of the proposed network design), public health organizations (*e.g.,* AACPR, ACCP, AMA, ATA, and NAMDRC), several State groups (*e.g.,* the New York City Law Department and the Metropolitan Washington Air Quality Committee), and some industry commenters (*e.g.,* American Chemistry Council, The Clean Energy Group, and Dow Chemical).

Those commenters who supported the adoption of the two-tier network design concept, but suggested modifications to the actual design included some health and environmental organizations (*e.g.,* ALA, EDF, EJ, and the NRDC), some States (*e.g.,* California, the Central Pennsylvania Clean Air Board, Harris County (Texas), Iowa, New York, San Joaquin Air Pollution Control District, Spokane Regional Clean Air Agency (SRCAA), the Texas Commission on Environmental Quality, and Wisconsin), and some industry commenters, including the American Petroleum Institute and the Utility Air Regulatory Group, who are cited by other industry commenters. We believe that although these commenters made suggestions to modify the proposed two-tier network design, they are indicating that it is an acceptable approach. Their comments and suggestions are discussed in greater detail in the following sections.

Those commenters who only supported the adoption of the alternative network design included State and industry groups (*e.g.,* Indiana Department of Environmental Management, the New York Department of Transportation (NYSDOT), Alliance of Automobile Manufacturers, and the Engine Manufacturers Association). These commenters typically made comments on the two-tier network design, but did not do so in a way that clearly supported near-road research.

EPA received comments from some States or State organizations (*e.g.,* National Association of Clean Air Agencies (NACAA), the Northeast States for Coordinated Air Use Management (NESCAUM), and 10 other individual States or State groups) and industry commenters (*e.g.,* Consumers Energy, Edison Electric, and the National Association of Manufacturers) that encouraged EPA to further research the near-road environment, opposing use of near-road monitoring data for regulatory purposes, and supported the adoption of the alternative network design for regulatory purposes. For example, with regard to implementing the two-tier network design that includes near-road regulatory monitoring, NACAA stated that "* * *a major new network—particularly one that is inherently complicated and untried—should not be rolled out without the benefit of an effective near-road monitoring research program that can address many of the relevant data questions, and inform the specific siting requirements of the rule." The NAM stated that "conducting such

a near road [research] monitoring program would allow EPA to collect necessary data that can be used to better understand the health impacts associated with short term NO_2 exposures."

The EPA notes that the existing scientific research referenced in the proposal and throughout this final rule show that there are on- and near-road peaks of NO_2 concentrations, relative to upwind or background levels, which exist due to on-road mobile source emissions. This research, as a body of evidence, also identifies the multiple local factors that affect how, where, and when peak NO_2 concentrations occur on or near a particular road segment. These factors include traffic volume, fleet mix, roadway design, congestion patterns, terrain, and meteorology. The EPA and States have access to such data typically through Federal, State, and/or local departments of transportation or other government organizations, and, as a result, are in a position to implement a near-roar monitoring network that is intended to measure maximum expected NO_2 concentrations resulting from on-road mobile source emissions. Further, EPA notes that near-road monitoring is not a new objective for the ambient air monitoring community as near-road carbon monoxide monitoring has been a part of ongoing, long-term, routine networks for nearly three decades. As a result, there is experience within EPA (both OAR and ORD) and State and local agencies on conducting ambient monitoring near-roads. In addition, EPA intends to develop guidance with input from all stakeholders to assist with implementation of the monitoring requirements, which is discussed in section III.B.5. EPA believes that the existing science and research provide a sufficient base of information to require a near-road monitoring network and that the collective experience that exists in the ambient monitoring community will allow for successful implementation of that network. EPA also believes that through adherence of requirements for near-road site selection and siting criteria discussed in sections III.B.6 and III.B.7, respectively, that the two-tier network design will provide a network that has a reasonable degree of similarity across the country where the required near-road monitors are targeting the maximum NO_2 concentrations in an area attributable to on-road mobile sources.

Some industry commenters (*e.g.,* Engine Manufacturers Association, the South Carolina Chamber of Commerce, and the South Carolina Manufacturers Alliance) who supported the adoption of the alternative network design suggested that monitoring in the near-road environment would not be indicative of exposure for general populations, and that EPA should not focus on the near-road environment when requiring monitoring. For example, the South Carolina Chamber of Commerce and the South Carolina Manufacturers Alliance both state that "it appears the proposed monitoring network will result in a collection of microscale data, which is not at all representative of air quality relevant to population exposure."

The EPA notes that the intent of a near-road monitoring is to support the revised NAAQS by assessing peak NO_2 concentrations that may occur anywhere in an area. EPA recognizes that there is variability in the properties (such as traffic counts, fleet mix, and localized features) among the road segments that may exist in an area, but on the whole, roads are ubiquitous, particularly in urban environments. Consequently, a substantial fraction of the population is potentially exposed to relatively higher concentrations of NO_2 that can occur in the near-road environment. The 2007 American Housing Survey (*http://www.census.gov/hhes/www/housing/ahs/ahs07/ahs07.html*) estimates that over 20 million housing units are within 300 feet (91 meters) of a 4-lane highway, airport, or railroad. Using the same survey, and considering that the average number of residential occupants in a housing unit is approximately 2.25, it is estimated that at least 45 million American citizens live near 4-lane highways, airports, or railroads. Although that survey includes airports and railroads, roads are the most pervasive of the three, indicating that a significant amount of the general population live near roads. Furthermore, the 2008 American Time Use Survey (*http://www.bls.gov/tus/*) reported that the average U.S. civilian spent over 70 minutes traveling per day. Accordingly, EPA concludes that monitors near major roads will address a component of exposure for a significant portion of the general population that would otherwise not be addressed.

The majority of State commenters, regardless of their position on the proposed network design, along with some industry commenters, observed that there was a need for funding the monitoring network. These comments urged EPA to provide the resources needed to implement and operate the required monitoring network. EPA notes that it has historically funded part of the cost of the installation and operation of monitors used to satisfy Federal monitoring requirements. EPA understands these concerns, although the CAA requirements from which this final rule derives (CAA sections 110, 310(a) and 319) are not contingent on EPA providing funding to States to assist in meeting monitoring requirements. However, EPA intends to work with NACAA and the State and local air agencies in identifying available State and Tribal Air Grant (STAG) funds and consider the increased resource needs that may be needed to plan, implement, and operate this revised set of minimum requirements.

c. Conclusions Regarding the Two-Tier Network Design

The EPA believes that requiring near-road monitors in urban areas as part of the network design are necessary to protect against risks associated with exposures to peak concentrations of NO_2 anywhere in an area. The combination of increased mobile source emissions and increased urban population densities can lead to increased exposures and associated risks, therefore urban areas are the appropriate areas to concentrate required near-road monitoring efforts. The EPA also recognizes the need to have monitors in neighborhood and larger spatial scale locations away from roads that represent area-wide concentrations. These types of monitors serve multiple important monitoring objectives including comparison to the NAAQS, photochemical pollutant assessment, ozone forecasting, characterization of point and area source impacts, and by providing historical trends data for current and future epidemiological health research. In some situations, when coupled with data from near-road monitors, area-wide monitors may also assist in the determination of spatial variation of NO_2 concentrations across a given area and provide insight to the gradients that exist between near-road or stationary source oriented concentrations and area-wide concentration levels.

After considering the scientific data and the public comments regarding the proposed network design, the Administrator concludes that a two-tier network design composed of (1) near-road monitors which would be placed in locations of expected maximum 1-hour NO_2 concentrations near heavily trafficked roads in urban areas and (2) monitors located to characterize areas with the maximum expected NO_2 concentrations at the neighborhood and larger spatial scales (also referred to as "area-wide" monitors) are needed to implement the 1-hour NO_2 NAAQS and

support the annual NAAQS. The details of this two-tier network design are discussed in the following eight sections.

2. First Tier (Near-Road Monitoring Component) of the NO_2 Network Design

This section provides background, rationale, and details for the final changes to the first tier of the two-tier NO_2 network design. In particular, this section will focus on the thresholds that trigger monitoring requirements. Near-road site selection and siting criteria details will be discussed in subsequent sections.

a. Proposed First Tier (Near-Road Monitoring Component) of the Network Design

EPA proposed that the first tier of the two-tier NO_2 monitoring network design focus monitors in locations of expected maximum 1-hour concentrations near major roads in urban areas. As noted in the previous section, the exposure assessment presented in the REA estimated that roadway-associated exposures account for the majority of exposures to peak NO_2 concentrations (REA, Figures 8–17, 8–18). Since the combination of increased mobile source emissions and increased urban population densities leads to increased exposures and associated risks, the Administrator judges that urban areas are the appropriate areas in which to concentrate required near-road monitoring efforts. Therefore, we proposed that a minimum of one near-road NO_2 monitor be required in Core Based Statistical Areas (CBSAs) with a population greater than or equal to 350,000 persons. Based on 2008 Census Bureau statistics, EPA estimated this would result in approximately 143 monitoring sites in as many CBSAs.

We also proposed that a second near-road monitor be required in CBSAs with a population greater than or equal to 2,500,000 persons, or in any CBSAs with one or more road segments with an Annual Average Daily Traffic (AADT) count greater than or equal to 250,000. Based on 2008 Census Bureau statistics and data from the 2007 Highway Performance Monitoring System (HPMS) maintained by the U.S. Department of Transportation (DOT) Federal Highway Administration (FHWA), this particular element of the minimum monitoring requirements would have added approximately 24 [22] sites to the approximate 143 near-road sites in CBSAs that already would have had one near-road monitor required due to the 350,000 population threshold. Overall, the first tier of the proposed network design was estimated to require 167 near-road sites in 143 CBSAs.

b. Comments

The EPA received comments from some industry and public health organizations (*e.g.* Dow Chemical, ATS, and the AMA) supporting the proposed approach to use population thresholds for triggering minimum near-road monitoring requirements. For example, Dow Chemical Company stated that "Dow comments that the proposed population thresholds are reasonable for implementation of the new network design and that we don't see a need to establish a threshold lower than 350,000 people for the lower bound."

The EPA received comments from some States and State groups suggesting that a combination of population and AADT counts or just AADT counts should be used to trigger minimum near-road monitoring requirements. For example, the San Joaquin Air Pollution Control District in California suggested that we modify minimum monitoring requirements so that one near-road NO_2 monitor is required for any CBSA with a population of 350,000 people which also had one or more road segments with AADT counts of 125,000 or more. In another example, Harris County Public Health and Environmental Services (HCPHES) suggested that "* * * rather than specifying population limits for the monitoring, HCPHES supports a metric like the Annual Average Daily Traffic (AADT) as a threshold for requiring a near-road monitor. An initial focus on an AADT in excess of 250,000 is acceptable as a starting point but EPA should revisit that level and consider lowering it to 100,000 in five years." AASHTO [23] and NYDOT [23] suggested that EPA could set a threshold at 140,000 AADT for requiring near-road monitors rather than using population thresholds.

EPA is finalizing the population-only threshold approach to trigger near-road monitoring, as the first step in the process of establishing the first-tier of near-road monitors, and for identifying the appropriate number and locations for siting these monitors. EPA believes that the uncertainty in defining specific national AADT counts is too great to support use in this first step of the alternative approaches suggested by the commenters. EPA notes that, in general, roads with higher AADT counts have relatively higher amounts of mobile source emissions, leading to an increased potential for relatively higher on-road and roadside NO_2 concentrations. This concept is supported, for example, by Gilbert *et al.,* 2007, who state that the NO_2 concentrations analyzed in their study are significantly associated with traffic counts. In part, these suggestions by commenters to include AADT counts as part of, or independently as, a threshold for requiring monitors appears to be aimed at increasing the focus of the near-road network to locations where NO_2 concentrations are expected to be highest. However these suggestions would also, in effect, reduce the size of the required network compared to the network that EPA had proposed. The differences in fleet mix, roadway design, congestion patterns, terrain, and local meteorology amongst road segments that may have identical AADTs are quite variable and affect the NO_2 concentrations on and near those segments. The available data and related technical and scientific quantification of what particular AADT count might be expected to contribute to some specific NO_2 concentration is insufficient to establish a specific, nationally applicable AADT count threshold that could be used as part of a population-AADT combination, or a distinct AADT count, to require all near-road monitors. Therefore, EPA chose not to utilize a population-AADT or an AADT-only threshold to trigger all minimally required near-road monitoring because of the lack of a quantitative, nationally applicable relationship between a certain AADT threshold and an expected NO_2 concentration. Instead, EPA is finalizing the proposed population-only threshold approach to trigger a minimum of one monitor in a CBSA. In larger CBSAs, EPA does require, at a minimum, a second monitor based on either an AADT count of 250,000 or a population threshold of 2,500,00 or more persons in a CBSA as described more fully below. EPA believes this approach for siting near-road monitoring provides a greater degree of certainty in covering a large segment of the total population (66%, which is explained below) and will provide data on exposure from geographically and spatially diverse areas where a larger number of people

[22] Of the 24 additional sites, 22 are estimated to be triggered due to a population of 2,500,000 while 2 (Las Vegas, NV and Sacramento, CA) are estimated to be triggered by the presence of one or more road segments with 250,000 AADT since they do not have a population of 2,500,000 people.

[23] AASHTO, NESCAUM, and NYDOT did not support the two-tier network design; however they provided suggestions on how the network design might be modified if the EPA were to finalize requirements for near-road monitors. In the case of AASHTO and NYDOT, their suggestions were made with the suggestion that EPA use a separate rulemaking process to require monitors.

are likely to be exposed to peak NO_2 concentrations.

Some commenters (*e.g.,* AASHTO,[23] NESCAUM,[23] NYDEC, NYDOT [23]) suggested focusing multiple near-road monitors only in relatively larger CBSAs than those which were proposed. For example, NYDEC suggested that EPA require, at minimum, two near-road monitors in any CBSA of 2,500,000 people or more, but not in CBSAs below that population threshold. In their comments, they point out the variety of near-road environments that exist in the larger CBSAs such as New York City.

EPA notes that the larger CBSAs, such as those with a population of 2,500,000 or more persons, are more likely to have a greater number of major roads across a potentially larger geographic area, and a corresponding increase in potential for exposure in different settings (evidenced in the U.S. Department of Transportation (U.S. DOT) Federal Highway Administration (FHWA) "Status of the Nation's Highways, Bridges, and Transit: 2006 Conditions and Performance" document which is discussed below). This is the primary reasoning behind the requirement for two monitors in CBSAs with more than 2,500,000 people. EPA also believes that having multiple monitors in the largest CBSAs will allow better understanding of the differences that may exist between roads in the same CBSA due to fleet mix, congestion patterns, terrain, or geographic locations. However, EPA believes that a network with substantially fewer monitors in correspondingly fewer CBSAs, as the commenters suggested, would lead to an insufficient monitoring network lacking a balanced approach needed for a regulatory network intended to support the revised NAAQS on a national basis.

On a related note to those comments that suggested focusing more near-road monitors only in the larger CBSAs, EPA proposed that any CBSAs with one or more road segments with an Annual Average Daily Traffic (AADT) count greater than or equal to 250,000 must have a second monitor if they do not already have two near-road monitors because of the population threshold. Such an AADT-triggered monitor would account for situations where a relatively less populated area has a very highly trafficked road. In this case, EPA notes that because those road segments with 250,000 AADT have been identified by U.S. DOT FHWA (*http://www.fhwa.dot.gov/policyinformation/tables/02.cfm*) as being the top 0.03 percent of the most traveled public road segments, that they are the most heavily trafficked roads in the country. Again noting that NO_2 concentrations are significantly associated with traffic counts (Gilbert *et al.* 2007), these roads segments likely have the greatest potential for high exposures directly connected to motor vehicle emissions in the entire country. Typically, these very highly trafficked roads are in the largest populated CBSAs, such as those with 2,500,000 people or more, and are somewhat atypical for CBSAs with less than 2,500,000 people. As a result, EPA believes it is appropriate to require a second monitor in a CBSA that has one or more road segments with 250,000 AADT counts or more if they do not already have two near-road monitors required due their population.

EPA received comments requesting that EPA explain the rationale for the selection of the population thresholds that trigger minimum monitoring requirements and also to reconsider the size of the network. For example, NYDOT suggested that this final rule explain the basis for the 350,000 and 2,500,000 population thresholds that will establish near-road monitors. In another comment, the Clean Air Council (CAC) questioned the selected population thresholds, noting that they believe that the population thresholds that were proposed were too high. Specifically, CAC stated that "at 350,000 persons, numerous metro areas in the mid-Atlantic and Northeastern States with urban cores and highways running through will likely be exempted from the new monitors." The Spokane Regional Clean Air Agency stated that they "do not believe it is necessary to require air quality monitoring for NO_2 near major roadways in every metropolitan area. It is our [SRCAA's] view that EPA could establish a statistically significant number of air quality monitoring stations near roadways and develop a correlation between traffic density and ambient NO_2 levels." Further, the EPA received many State comments suggesting reductions to the overall size of the near-road network; however the commenters did not provide very specific suggestions on how EPA should accomplish that reduction in size. For example, the Regional Air Pollution Control Agency, which represents a portion of Ohio, stated "given the fairly standard fleet of vehicles on the nation's major highways, we urge EPA to consider the need for 142 near-roadway monitors. Perhaps a limited number of monitors across the country would suffice to sufficiently characterize near-roadway NO_2 levels." These State commenters provided various reasons which are discussed throughout this document suggesting that the network be reduced in size, including funding concerns (section III.B.1.b), the perceived need to implement a smaller near-road research network in lieu of a regulatory network (section III.B.1.b), safety issues (section III.B.7.b), and problems with State implementation plans (section VI. D) and designation issues (section V).

EPA notes that the intent of the first tier of the network design is to support the revised NAAQS in measuring peak NO_2 exposures in an area by including a minimum number of monitors resulting in a sufficiently sized national near-road monitoring network that will provide data from a geographically and spatially diverse array of areas, in terms of population, potential fleet mixes, geographic extent, and geographic setting, from across the country. The U.S. Department of Transportation (U.S. DOT) Federal Highway Administration (FHWA) "Status of the Nation's Highways, Bridges, and Transit: 2006 Conditions and Performance" document (*http://www.fhwa.dot.gov/policy/2006cpr/es02h.htm*) states that "while urban mileage constitutes only 24.9 percent of total (U.S.) mileage, these roads carried 64.1 percent of the 3 trillion vehicles miles (VMT) travelled in the United States in 2004." The document also states that "urban interstate highways made up only 0.4 percent of total (U.S.) mileage but carried 15.5 percent of total VMT." These statements indicate how much more traffic volume exists on roads in urban areas versus the more rural areas that have significant amounts mileage of the total public road inventory. The basis for the selection of the proposed CBSA population level of 350,000 to trigger the requirement of one near-road monitor was chosen in an attempt to provide near-road monitoring data from a diverse array of areas, as noted above. However, in response to the significant number of comments discussed above, which in various ways encouraged at least a reduction of the size of the required near-road network or the implementation of a relatively smaller research network, EPA reconsidered the population threshold that will require one near-road NO_2 monitor in a CBSA.

EPA reviewed the data, such as population, geographic, and spatial distribution, associated with particular CBSA areas that would and would not be included in particular CBSA population thresholds. According to the 2008 U.S. Census Bureau estimates (*http://www.census.gov*) there are 143 CBSAs with 350,000 or more persons (including territories) which contain approximately 71% of the total population (excluding territories). These

CBSAs collectively represent territory in 44 States, the District of Columbia, and Puerto Rico. For comparison, there are 391 CBSAs with 100,000 or more persons, which contain approximately 86% of the total population (excluding territories). These particular CBSAs collectively represent territory in 49 States, the District of Columbia, and Puerto Rico. Further, there are 102 CBSAs with 500,000 or more persons, which contain approximately 66% of the total population (excluding territories). These 102 CBSAs collectively represent territory in 43 States, the District of Columbia, and Puerto Rico. Finally, there are 22 CBSAs with 2,500,000 or more persons, which contain approximately 39% of the total population, collectively representing territory in 19 States, the District of Columbia, and Puerto Rico. In comparison to the CBSA population threshold of 350,000, the 500,000 population threshold has 41 less CBSAs. However, the percentage of the total U.S. population residing in these two sets of CBSAs differs by only approximately 5 percent of the total population (*e.g.,* 71% in CBSAs of 350,000 or more versus 66% in CBSAs of 500,000 or more persons). Also, when comparing the number of States that have some amount of their territory included in these CBSAs, the difference between the two sets of CBSAs differs by only 1 State (Alaska).

Further, EPA notes that the REA Air Quality Analysis, (REA, section 7.3.2) estimated the exceedences of health benchmark levels across the United States, including explicit consideration of on- or near- roadway exceedances in 17 urban areas associated with CBSA populations ranging from approximately 19,000,000 to 540,000. The analysis indicated that all 17 of the areas under explicit consideration were estimated to experience NO_2 concentrations on or near roads that exceeded health benchmark levels.

c. Conclusions Regarding the First Tier (Near-Road Monitoring Component) of the Network Design

After consideration of public comments, and in light of the information discussed above, the Administrator has chosen to finalize the CBSA population threshold for requiring a minimum of one near-road monitor in CBSAs with a population of 500,000 or more persons. The Administrator is finalizing the other thresholds that will trigger a second near-road monitor as proposed. Accordingly, one near-road NO_2 monitor is required in CBSAs with a population greater than or equal to 500,000 persons and a second near-road monitor is required in CBSAs with a population greater than or equal to 2,500,000 persons, or in any CBSAs with one or more road segments with an Annual Average Daily Traffic (AADT) count greater than or equal to 250,000.

The Administrator has concluded that using a population threshold of 500,000 to require a minimum of one near-road monitor in a CBSA provides a sufficiently sized, national network of near-road monitors that will provide data from a geographically and spatially diverse set of CBSAs that supports the intent of the revised NAAQS and continues to meet the monitoring objectives of the network. Combined with the forty additional monitors that the Regional Administrators are required to site, discussed below, the monitoring network would cover an additional percentage of the total population.

EPA believes that selecting a lower population threshold, such as 100,000 or, to a lesser degree, 350,000, as discussed in the above examples, would create a much larger network of required near-road monitors but would provide diminished population coverage per monitor, compared to that provided by the 500,000 threshold. EPA notes that if a particular area, such as one with a population less than 500,000 people, might warrant a near-road monitor, the Regional Administrator has the authority to require additional monitors. The Regional Administrators' authority is discussed in section III.B.4. Further, States have the right to conduct additional monitoring above the minimum requirements on their own initiative. In the Administrator's judgment, selecting a higher threshold, such as 2,500,000, as was suggested by some commenters, does not provide a sufficient geographical and spatially diverse near-road network, compared to that provided by the 500,000 threshold. The selection of the 2,500,000 population threshold to trigger a second near-road monitor, as noted earlier in this section, is based on the fact that the larger urban areas in the country are likely to have a greater number of major roads across a potentially larger geographic area, and have a corresponding increase in potential for population exposure to elevated levels in different settings.

Changing the CBSA population threshold 350,000 to 500,000 results in a near-road monitoring network requiring approximately 126 monitors distributed within 102 CBSAs. Compared to the total number of required near-road monitors that would have resulted from the proposed CBSA population threshold of 350,000 (167 monitors), an estimated 41 fewer monitors are required. EPA has also recognized that susceptible and vulnerable populations, which include asthmatics and disproportionately exposed groups, (as discussed in sections II.B.4 and II.F.4.d) are at particular risk of NO_2-related health effects. The Administrator is therefore requiring the Regional Administrators, working in collaboration with States, to site forty monitors in appropriate locations, focusing primarily on protecting such susceptible and vulnerable communities. This decision is discussed in detail in section III.B.4.

3. Second Tier (Area-Wide Monitoring Component) of the Network Design

The following paragraphs provide background, rationale, and details for the final changes to the second tier of the two-tier NO_2 network design. In particular, this section will focus on the threshold that triggers area-wide monitoring requirements. Area-wide site selection and siting criteria details will be discussed in a subsequent section.

a. Proposed Second Tier (Area-Wide Monitoring Component) of the Network Design

As the second tier of the proposed two-tier network design, EPA proposed to require monitors to characterize the expected maximum NO_2 concentrations at the neighborhood and larger (area-wide) spatial scales in an area. This component of the two-tier network design provides information on area-wide exposures that may occur due to an individual or a group of point, area, on-road, and/or non-road sources. Further, area-wide sites serve multiple monitoring objectives aside from NAAQS comparison to both the 1-hour and the annual NAAQS, including photochemical pollutant assessment, aiding in ozone forecasting, aiding in particulate matter precursor analysis and particulate matter forecasting. We proposed to require one area-wide monitoring site in each CBSA with a population greater than or equal to 1,000,000. We proposed that these area-wide sites were to be sited to represent an area of highest concentration at the neighborhood or larger spatial scales. Based on 2008 Census Bureau statistics, there are 52 CBSAs with 1,000,000 people or more, which would result in an estimated 52 area-wide monitors in as many CBSAs being minimally required. EPA also proposed to allow any current photochemical assessment monitoring station (PAMS) sites that are sited where the highest NO_2 concentrations occur in an urban area

and represent a neighborhood or urban scale to satisfy the area-wide monitoring requirement.

b. Comments

Most commenters who commented on area-wide monitoring supported the adoption of the alternative area-wide network design and did not specifically comment on the area-wide monitoring component of the proposed two-tier network design. However, EPA did receive comments from public health organizations on area-wide monitoring in the context of the proposed network design. The public health group commenters, including the ALA, EJ, EDF, and the NRDC, stated they "oppose the proposed requirement to retain only 52 air monitors to measure area-wide concentrations of NO_2."

EPA understands the perceived concern to be that with this provision, EPA is actively reducing the number of required area-wide monitors. Prior to this rulemaking, the Ambient Air Monitoring Regulations, 71 FR 61236 (Oct. 17, 2006) (2006 monitoring rule) removed minimum monitoring requirements for NO_2, and the rationale for that action is explained in that rule; however, the 2006 Monitoring rule has had a limited impact to date, evidenced by the fact that the size of the NO_2 network has remained relatively steady at around 400 monitors, a majority of which are area-wide monitors, that were operating in 2008 (Watkins and Thompson, 2008). The stability of the NO_2 network is due in large part to the fact that area-wide monitors serve multiple monitoring objectives, including photochemical pollutant assessment, pollutant forecasting, and in some cases, support to ongoing health research. However, considering the objective of this two-tier network design, particularly the first tier, of supporting the revised NAAQS to protect against peak NO_2 exposures, some shrinkage in the area-wide network is appropriate and likely. EPA believes that the actual number of area-wide monitors that will operate in the NO_2 network will be greater than the minimally required 52 sites, but likely less than the current number. States and Regional Administrators will work together on which area-wide sites may warrant retention above the minimum required if States request existing area-wide sites to be shut down or relocated.

c. Conclusions on the Second Tier (Area-Wide Monitoring Component) of the Network Design

Area-wide monitoring sites serve multiple monitoring objectives aside from NAAQS comparison to both the 1-hour and the annual NAAQS, including photochemical pollutant assessment, ozone forecasting, particulate matter precursor analysis and particulate matter forecasting. EPA recognizes that a significant portion of the existing NO_2 monitoring network can be characterized as area-wide monitors and that these monitoring sites serve multiple monitoring objectives, as noted above. In order to ensure that a minimum number of area-wide monitors continue operating into the future, we are finalizing the proposed minimum monitoring requirements for area-wide monitors, where one area-wide monitor is required in any CBSA with 1,000,000 people or more. Since there were no adverse comments received with regard to allowing PAMS stations that meet siting criteria to satisfy minimum monitoring requirements for area-wide monitors, we are finalizing that allowance as proposed. EPA encourages States to use the upcoming 2010 network assessment process to review existing area-wide NO_2 sites to help determine what monitors might meet minimum monitoring requirements and whether or not other existing monitors warrant continued operation.

4. Regional Administrator Authority

The following paragraphs provide background, rationale, and details for the final changes to Regional Administrator authority to use discretion in requiring additional NO_2 monitors beyond the minimum network requirements. The proposed rule estimated that approximately 167 near-road monitors would be required within CBSAs having populations of 350,000 or more persons. As discussed above in section III.B.2, in response to public comments, particularly from States, EPA is changing the population threshold for siting a minimum of one near-road NO_2 monitor from CBSAs with 350,000 or more persons to CBSAs with 500,000 or more persons. EPA estimates that this change in the population threshold will result in a reduction in the number of minimally required near-road NO_2 monitors by approximately forty monitors. EPA has also recognized that susceptible and vulnerable populations, which include asthmatics and disproportionately exposed groups (as discussed in sections II.B.4 and II.F.4.d) are at particular risk of NO_2-related health effects. The Administrator is therefore requiring the Regional Administrators, working in collaboration with States, to site these forty monitors in appropriate locations, focusing primarily on protecting susceptible and vulnerable communities. In addition, the Regional Administrators, working with States, may take into account other considerations described below in using their discretion to require additional monitors.

a. Proposed Regional Administrator Authority

EPA proposed that Regional Administrators have the authority to require monitoring at their discretion in particular instances. First, EPA proposed that the Regional Administrator have discretion to require monitoring above the minimum requirements as necessary to address situations where the required near-road monitors do not represent a location or locations where the expected maximum hourly NO_2 concentrations exist in a CBSA. Second, EPA proposed to allow Regional Administrators the discretion to require additional near-road monitoring sites to address circumstances where minimum monitoring requirements are not sufficient to meet monitoring objectives, such as where exposures to NO_2 concentrations vary across an area because of varied fleet mixes, congestion patterns, terrain, or geographic areas within a CBSA. And third, EPA proposed that Regional Administrators have the discretion to require additional area-wide NO_2 monitoring sites above the minimum requirements for area-wide monitors where the minimum requirements are not sufficient to meet monitoring objectives.

b. Comments

EPA received comments from the Center on Race, Poverty and Environment expressing concern that the proposed monitoring provisions fail to consider "disproportionately impacted communities" which include people of color and of lower socioeconomic status. The commenter argues that this is "a gaping hole" in the proposed monitoring system and disproportionately impacts minority and low income populations in rural communities. In addition, the National Tribal Air Association stated that "Indian Tribes and Alaska Natives are highly susceptible to health impacts as a result of NO_2 exposure" and "the prevalence and severity of asthma is higher among certain ethnic or racial groups such as Indian Tribes and Alaska Natives," which is also discussed in section II.B.4 and the ISA (ISA, section 4.4).

The proposed rule provided the Regional Administrators with the authority to use their discretion and

consider certain factors to require monitors above the minimum number in a CBSA. The proposal described one example where a Regional Administrator might require an additional near-road monitor where "a particular community or neighborhood is significantly or uniquely affected by road emissions." EPA recognizes that susceptible and vulnerable populations, which include asthmatics and disproportionately exposed groups, as noted in section II.F.4.d, are at particular risk of NO_2-related health effects, both because of increased exposure and because these groups have a higher prevalence of asthma and higher hospitalization rates for asthma. As noted above, in conjunction with raising the threshold for requiring one near-road NO_2 monitor in CBSAs with 500,000 persons or more, EPA is requiring the Regional Administrators, under their discretionary authority, to work with States to site an additional forty monitors, nationally, focusing primarily on communities where susceptible and vulnerable populations are located. To address the risks of increased exposure to these populations, the Administrator has determined that it is appropriate and necessary, under this provision, to ensure these additional forty monitors are sited primarily in communities where susceptible and vulnerable populations are exposed to NO_2 concentrations that have the potential to exceed the NAAQS (due to emissions from motor vehicles, point sources, or area sources). As a result of this action, the total number of monitors required through this rulemaking is generally equivalent to the proposed number of minimally required monitors.

EPA received comments from public health groups (*e.g.,* ALA, Center on Race, Poverty, and the Environment, EDF, EJ, NRDC) and the Swinomish Tribe, who suggested that EPA expand monitoring coverage to address impacts from stationary sources outside of urban areas. For example, ALA, EDF, EJ, and NRDC, stated that "EPA should require States and local offices to review inventory data to identify any potential NO_2 hotspots outside of those large metropolitan areas. For instance, if a large power plant or any other source is creating elevated NO_2 levels in proximity to homes, schools or other sensitive sites, in an area of less than one million people, EPA should consider requiring a monitor."

EPA recognizes that there are major NO_2 sources outside of CBSAs that have the potential to contribute to NO_2 concentrations approaching or exceeding the NAAQS. The issue is whether such monitoring should be addressed through a more extensive set of minimum requirements that might include monitoring near all large stationary sources such as airports, seaports, and power plants, which could lead to deploying a large number of monitors. EPA believes that a more reasonable approach to address monitoring needs related to the diverse set of point, area, and non-road mobile NO_2 sources, whether inside or outside of CBSAs, is to provide Regional Administrators the authority to require additional monitoring in areas where these impacts could occur. While the proposal did not specifically state that Regional Administrators could require non-area-wide monitors outside of CBSAs, EPA believes that it is important that Regional Administrators have the authority to require NO_2 monitoring in locations where NO_2 concentrations may be approaching or exceeding the NAAQS, whether located inside or outside of CBSAs. Therefore, in the final rule, EPA is not limiting the Regional Administrators' discretionary authority to require NO_2 monitoring only inside CBSAs; instead, the EPA is providing Regional Administrators the authority to site monitors in locations where NO_2 concentrations may be approaching or exceeding the NAAQS, both inside or outside of CBSAs.

The EPA also received comments from some State groups (*e.g.* the New York Department of Environmental Conservation (NYSDEC), New York Department of Transportation (NYSDOT), and the New York City Law Department) and an industry group (the Council of Industrial Boiler Operators) requesting greater clarification on the way in which Regional Administrators may use their authority to require additional monitors above the minimum requirements. For example, the Council of Industrial Boiler Operators stated that "this [Regional Administrator authority] unreasonably vests an unbounded amount of discretion in EPA to determine when "minimum monitoring requirements are not sufficient" and which neighborhoods are "uniquely affected," and impose additional monitoring requirements where all applicable monitoring requirements are already met by the State and local agency."

The authority of Regional Administrators to require additional monitoring above the minimum required is not unique to NO_2. For example, Regional Administrators have or are proposed to have the authority to use their discretion to require additional Pb monitors (40 CFR Part 58 Appendix D section 4.5), and have the discretion to work with States or local agencies in designing and/or maintaining an appropriate ozone network, per 40 CFR Part 58 Appendix D section 4.1. EPA believes that while the NO_2 monitoring network is sufficiently sized and focused, a nationally applicable network design may not account for all locations in which potentially high concentrations approaching or exceeding the NAAQS exist. Therefore, EPA believes it is important for Regional Administrators to have the ability to address possible gaps in the minimally required monitoring network, by granting them authority to require monitoring above the minimum requirements.

One case in which the Regional Administrator may exercise discretion in requiring a monitor might be a location or community affected by a stationary source where the required near-road NO_2 monitor site is not the location of the maximum hourly concentration in a CBSA. For any given CBSA, there is the possibility that the maximum NO_2 concentrations could be attributed to impacts from one, or a combination of, multiple sources that could include point, area, and non-road source emissions in addition to on-road mobile source emissions. As a result, the Regional Administrator may choose to require monitoring in such a location. In addition, there is the possibility that a single source or group of sources exists which may contribute to concentrations approaching or exceeding the NAAQS at locations inside or outside CBSAs, including rural communities. In such cases, Regional Administrators, working with States, may require a monitor in these locations. Further, if there are NO_2 sources responsible for producing more widespread impacts on a community or relatively larger area, Regional Administrators may require an area-wide monitor to assess wider population exposures, or to support other monitor objectives served by area-wide monitors such as photochemical pollutant assessment or pollutant forecasting.

Regional Administrators may also require additional monitoring where a State or local agency is fulfilling its minimum monitoring requirements with an appropriate number of near-road monitors, but an additional location is identified where near-road population exposure exists at concentrations approaching or exceeding the NAAQS. In this case, the exposure may be due to differences in fleet mix, congestion patterns, terrain, or geographic area, relative to any minimally required monitoring site(s) in that area. We note

that such areas might exist in CBSAs with populations less than 500,000 persons.

EPA recognizes that high concentrations of NO_2 that approach or exceed the NAAQS could potentially occur in a variety of locations in an area, and we believe that Regional Administrators should have the discretion to require additional monitoring when a location is identified based on the factors discussed in the paragraph above. In such situations, State or EPA Regional staff is likely to have identified these locations through data analysis, such as the evaluation of existing ambient data and/or emissions data, or through air quality modeling. Such information may indicate that an area has NO_2 concentrations that may approach or exceed the NAAQS, and that there is potential for population exposure to those high concentrations.

The Regional Administrator would use this authority in collaboration with State agencies. We expect Regional Administrators to work with State and local agencies to design and/or maintain the most appropriate NO_2 network to meet the needs of a given area. For all the situations where a Regional Administrator may require additional monitoring, including the forty additional monitors the Regional Administrators are required to site, EPA expects Regional Administrators to work on a case-by-case basis with States. Further, for the forty additional monitors that will focus primarily on protecting susceptible and vulnerable communities, EPA intends to work with States to develop criteria to guide site selection for those monitors.

c. Conclusions on Regional Administrator Authority

EPA is requiring Regional Administrators to work with States to site forty NO_2 monitors, above the minimum number required in the two-tier network design, focused primarily in susceptible and vulnerable communities exposed to NO_2 concentrations that have the potential to approach or exceed NAAQS. In addition, recognizing that a nationally applicable monitoring network design will not include all sites with potentially high concentrations due to variations across locations, and in response to public comments, the Administrator is providing Regional Administrators with the discretion to require additional monitors above the minimum requirements.

Regional Administrators may also use their discretionary authority to require monitoring above the minimum requirements as necessary to address situations inside or outside of CBSAs in which (1) The required near-road monitors do not represent all locations of expected maximum hourly NO_2 concentrations in an area and NO_2 concentrations may be approaching or exceeding the NAAQS in that area; (2) areas that are not required to have a monitor in accordance with the monitoring requirements and NO_2 concentrations may be approaching or exceeding the NAAQS; or (3) the minimum monitoring requirements for area-wide monitors are not sufficient to meet monitoring objectives. In all cases in which a Regional Administrator may consider the need for additional monitoring, EPA expects that Regional Administrators will work with the State or local agencies to evaluate evidence that suggests an area may warrant additional monitoring. EPA also notes that if additional monitoring should be required, as negotiated between the Regional Administrator and the State, the State will modify the information in its Annual Monitoring Network Plan to include any potential new sites prior to approval by the EPA Regional Administrator.

5. Monitoring Network Implementation

The following paragraphs provide background, rationale, and details for the final changes to the approach for the monitoring network implementation.

a. Proposed Monitoring Network Implementation Approach

EPA proposed that State and, when appropriate, local air monitoring agencies provide a plan for deploying monitors in accordance with the proposed network design by July 1, 2011. EPA also proposed that the proposed NO_2 network be physically established no later than January 1, 2013.

b. Comments

Most environmental and public health group commenters suggested that EPA change the implementation date from the proposed January 1, 2013 to a date that would require the minimum required NO_2 network to be deployed sooner than proposed. Most States and State group commenters, along with industry group commenters, recommended that EPA keep the network implementation date as January 1, 2013, or move it later than proposed. Those commenters who suggested moving it later noted that issues with monitoring site identification, site development, and overall lack of experience working in the near-road environment would make implementation difficult under the proposed implementation deadline.

EPA recognizes the challenges involved with deploying the two-tier network design by the January 1, 2013 date. We recognize the need for additional information and plan to aid State agencies in the network implementation process, particularly by developing guidance in partnership with affected stakeholders, ideally including at a minimum NACAA and the States. EPA agrees with NACAA's suggestion that the CASAC Ambient Air Monitoring and Methods subcommittee should be consulted as part of developing any guidance developed for near-road monitoring, and has already begun the process by scheduling meetings with them regarding near-road monitoring. Further, EPA believes that collaboration with the States and State groups in developing guidance will be highly beneficial to the implementation process. This would allow for those States that do have increased experience in near-road monitoring to support the guidance development process and provide a conduit for sharing experiences amongst all stakeholders.

In perspective, EPA believes that the approximate 2 years and 11 months between promulgation of this rulemaking and the mandated January 1, 2013 network implementation date includes extra time relative to what is traditionally allowed for network implementation following rulemakings. We are also cognizant of the time needed to collect complete data that would allow data from the two-tier network to be considered for designations and for use in the next NO_2 NAAQS review data from the 2013, 2014, and 2015 years would provide critical information in the next NAAQS review, intended to occur on a 5-year cycle, and for use in subsequent designations. Even with complete data from 2013, 2014, and 2015 years designations would not occur until 2017, at the earliest.

c. Conclusions on Monitoring Network Implementation

EPA is finalizing the date by which State and, when appropriate, local air monitoring agencies shall establish the required NO_2 monitoring network as January 1, 2013, as was proposed. We believe that the allotted time for implementation will allow for the development of guidance documentation, particularly allowing for interactions with CASAC and NACAA/States, and for the processes that will be involved in deploying this network. However, EPA recognizes that the network implementation process,

particularly for near-road monitors, will include the assessment of road segments in CBSAs to identify locations of maximum expected hourly NO_2 concentrations, identifying and working with other State and local agencies, such as transportation officials, as needed on issues regarding access and safety, and the exchange of information and feedback on potential sites with EPA, prior to any commitment to selecting and presenting new sites in an annual monitoring plan. As a result, based on feedback received through public comments, and to allow for more time to process guidance information, to carry out the deployment processes, and to allow for information exchanges to occur, we are changing the date by which State and, when appropriate, local air monitoring agencies shall provide a plan for deploying monitors in accordance with required network design, including the monitors required under the Regional Administrators' discretional authority which are to be primarily focused on providing protection to susceptible and vulnerable populations, as discussed in section III.B.4, from July 1, 2011 to July 1, 2012. EPA strongly encourages State and local air agencies to supply as much information as possible on the NO_2 sites they may be considering, including possible site coordinates if available, or have possibly selected, to satisfy the minimum NO_2 network monitoring requirements in their Annual Monitoring Network Plan submitted July 1, 2011.

6. Near-Road Site Selection

The following paragraphs provide background, rationale, and details for the final changes to the approach and criteria by which required near-road sites shall be selected.

a. Proposed Near-Road Site Selection Criterion

EPA proposed that the required near-road NO_2 monitoring stations shall be selected by ranking all road segments within a CBSA by AADT and then identifying a location or locations adjacent to those highest ranked road segments where maximum hourly NO_2 concentrations are expected to be highest and siting criteria can be met in accordance with that proposed for 40 CFR Part 58 Appendix E (discussed in III.B.7). Where a State or local air monitoring agency identifies multiple acceptable candidate sites where maximum hourly NO_2 concentrations are expected to occur, the monitoring agency should consider taking into account the potential for population exposure in the criteria utilized to select the final site location. Where one CBSA is required to have two near-road NO_2 monitoring stations, we proposed that the sites shall be differentiated from each other by one or more of the following factors: Fleet mix; congestion patterns; terrain; geographic area within the CBSA; or different route, interstate, or freeway designation.

b. Comments

EPA received many comments from CASAC, public health groups, States and State groups, and industry groups on the proposed process by which States will select near-road sites. CASAC, along with some health group and State commenters questioned how States should select a site near the road with the highest ranked AADT possible, noting that EPA did not appear to require States to account for other factors. For example, one CASAC panel member noted that siting monitors based on traffic counts alone might miss locations where maximum NO_2 concentrations would occur. They proceeded to recommend the use of modeling to assist in the site selection process. In another example, the ALA, EDJ, EJ, and NRDC, stated that "Near-road monitor placement should be determined not only by the highest AADT volumes in a given CBSA, but also by the highest heavy-duty truck volumes." NACAA also expressed concerns on "* * * basing monitor locations on the annual average daily traffic (AADT) without regard to vehicle mix or dispersion characteristics * * *".

EPA does not intend for AADT counts to be the sole basis for choosing a near-road site. As noted earlier in section III.B.2, there is a general relationship between AADT and mobile source pollution, where higher traffic counts correspond to higher mobile source emissions. The use of AADT counts is intended to be a mechanism for focusing on identifying the locations of expected maximum NO_2 concentrations due to mobile sources. There are other factors that can influence which road segment in a CBSA may be the actual location where the maximum NO_2 concentrations could occur. These factors include vehicle fleet mix, roadway design, congestion patterns, terrain, and meteorology. When States identify their top-ranked road segments by AADT, EPA intends for States to evaluate all of the factors listed above in their site selection process, due to their influence on where the location of expected maximum NO_2 concentration may occur. As a result of the comments indicating a need for clarification, EPA will specifically list the factors that must be considered by States in their site selection process once a State has identified the most heavily trafficked roads in a CBSA based on AADT counts. In addition, EPA proposed that States consider these factors when they are required to place two near-road monitors in a CBSA, *i.e.,* CBSAs with a population of 2,500,000 persons or more. EPA notes that these factors will be used in differentiating the two monitoring sites from each other, providing further characterization of near-road environments in larger urban areas that are more likely to have a greater number of major roads across a potentially larger geographic area, and a corresponding increase in potential for exposure in different settings. Finally, EPA notes that air quality models, which were noted by the CASAC panel member to be considered for use in near-road site selection, are tools that EPA believes will be useful, and likely used by some States to inform where near-road sites need to be placed.

EPA received comments from some State and industry commenters (*e.g.* Iowa, NY DEC, Edison Electric Institute, and Savannah River Nuclear Solutions) who suggested that potential population exposure should be a first-level metric in the near-road monitoring site selection process, instead of a second-level metric as EPA had proposed.

EPA notes that the intent of the revised primary NO_2 NAAQS is to protect against the maximum allowable NO_2 concentration anywhere in an area, which includes ambient air on and around roads. This would limit exposures to peak NO_2 concentrations, including those due to mobile source emissions, across locations (including those locations where population exposure near roads is greatest) in a given CBSA or area, with a relatively high degree of confidence. We also note the agency's historical practice has been to site ambient air monitors in locations of maximum concentration, at the appropriate spatial scale. If EPA were to allow population, population density, or another population weighted metric to be a primary factor in the decision on where required near-road NO_2 monitors are to be located, it is possible that the required near-road monitors in a CBSA would not be located at a site of expected maximum hourly near-road NO_2 concentration. By monitoring in the location of expected maximum 1-hour concentrations, near-road monitoring sites will likely represent the highest NO_2 concentrations in an area directly attributable to mobile sources or a group of sources that includes mobile sources. The proposed rule did permit, and the final rule states, that States are to

consider population in the site selection process in situations when a State identifies multiple candidate sites where maximum hourly NO_2 concentrations are expected to occur.

EPA received a comment from HCPHES suggesting that required monitoring should take into consideration the location of other major mobile sources for NO_2 emissions such as airports and seaports. EPA also received a comment from the South Carolina Department of Health and Environmental Control stating that a near-road network does not address "widespread pollutants from numerous and diverse sources."

EPA recognizes that there are major NO_2 sources outside of CBSAs that have the potential to contribute to NO_2 concentrations approaching or exceeding the NAAQS. The issue is whether such monitoring should be addressed through a more extensive set of minimum requirements that might include monitoring near all large stationary sources such as airports, seaports, and power plants, which could lead to deploying a large number of monitors. EPA believes that a more reasonable approach to address monitoring needs related to the diverse set of point, area, and non-road mobile NO_2 sources, whether inside or outside of CBSAs, is to provide Regional Administrators the authority to require additional monitoring in areas where these impacts could occur. Providing the Regional Administrators with the discretion to require additional monitors allows them to effectively address such situations, even if that area is satisfying minimum monitoring requirements. This Regional Administrator authority is discussed above in section III.B.4. EPA also notes that State and local agencies may also monitor such locations on their own initiative.

One State commenter, the Wisconsin Department of Natural Resources, requested that the term "major road" be defined and also requested clarification on what "top-ranked" means with regard to AADT counts on road segments. While the term "major road" is widely used in literature and can be found to be defined differently from one scientific study to another, here, EPA is using it in its commonly understood meaning as a road that is relatively heavily trafficked. EPA also does not believe it is appropriate to provide a bright-line definition for "top-ranked". Each CBSA will have a different distribution of total road segments and corresponding AADT counts on those segments. Further, since required near-road monitors are to be sited in locations of expected maximum concentrations, a percentile restriction on "top ranked" roads is unnecessary. The intent of the requirement to rank all road segments by AADT counts and select a site, considering the other local factors noted above, near a "top-ranked" road segment is to focus attention on the most heavily trafficked roads, around which there is higher potential for maximum NO_2 concentrations to occur.

c. Conclusions on Near-Road Site Selection

We are finalizing the near-road site selection criteria as proposed, and are clarifying that the proposal intended the selection criteria to include consideration of localized factors when identifying locations of expected maximum concentrations. As a result, required near-road NO_2 monitoring stations shall be selected by ranking all road segments within a CBSA by AADT and then identifying a location or locations adjacent to those highest ranked road segments, considering fleet mix, roadway design, congestion patterns, terrain, and meteorology, where maximum hourly NO_2 concentrations are expected to occur and siting criteria can be met in accordance with 40 CFR Part 58 Appendix E. As was noted in section III.B.5 above, EPA will work with States to assist with the near-road site selection process through the development of guidance material and through information exchanges amongst the air monitoring community.

We are also finalizing the requirement, as proposed, that when one CBSA is required to have two near-road NO_2 monitoring stations, the sites shall be differentiated from each other by one or more of the following factors: fleet mix; congestion patterns; terrain; geographic area within the CBSA; or different route, interstate, or freeway designation, as was proposed.

7. Near-Road Siting Criteria

The following paragraphs provide background, rationale, and details for the final changes to the siting criteria for required near-road monitoring sites.

a. Proposed Near-Road Siting Criteria

EPA proposed that near-road NO_2 monitoring stations must be sited so that the NO_2 monitor probe is no greater than 50 meters away, horizontally, from the outside nearest edge of the traffic lanes of the target road segment, and shall have no obstructions in the fetch between the monitor probe and roadway traffic such as noise barriers or vegetation higher than the monitor probe height. We solicited comment on, but did not propose, having near-road sites located on the predominantly downwind side of the target roadways. EPA proposed that the monitor probe shall be located within 2 to 7 meters above the ground, as is required for microscale $PM_{2.5}$ and PM_{10} sites. We also proposed that monitor probe placement on noise barriers or buildings, where the inlet probe height is no less than 2 meters and no more than 7 meters above the target road, will be acceptable, so long as the inlet probe is at least 1 meter vertically or horizontally away (in the direction of the target road) from any supporting wall or structure, and the subsequent residence time of the pollutant in the sample line between the inlet probe and the analyzer does not exceed 20 seconds.

b. Comments

EPA received comments from a number of States (*e.g.* Michigan, Mississippi, and Tennessee) indicating that the near-road network poses significant safety issues and a related need for increased logistical flexibility for installing a monitoring site. For example, the Mississippi Department of Environmental Quality states that "Given the fact that these NO_2 sites will be required to be housed in shelters that are within 50 meters of the road, we believe that these buildings could be large and pose a serious risk to drivers on the road."

EPA notes that in all instances of field work, safety is a top priority. In this instance of near-road monitoring, we are dealing with the safety of the public driving on roads and the monitoring staff who may operate the near-road monitoring station as well. There are various ways to install near-road sites while ensuring worker and traffic safety, and safety is an important part of the logistical considerations that States should consider when selecting and installing near-road sites. In many cases, State and local monitoring agencies may be able to work with their State or local transportation officials during the site selection process to deal with access and safety issues. In public comments, AASHTO recommended that "* * * State and local air monitoring agencies be required to coordinate with State and local DOTs for near-road monitoring during the establishment of the monitoring plan." Although EPA cannot require States to coordinate with other State or local entities, EPA believes that transportation officials would likely be able to assist in finding solutions to ensure safety while working with monitoring agencies in accommodating a new near-road monitoring station. An

example of a step that could be taken to alleviate safety concerns might be purposefully placing a monitoring site behind existing barriers like guardrails and fencing, or possibly by installing a short distance of such barriers to protect the site workers, site infrastructure, and nearby traffic. In addition, EPA notes that the 50m distance proposed is wide enough to accommodate a site that would satisfy many setback provisions that exist for private or commercial building permits near roads, and may be viewed as a confirmation that our proposed siting criteria are safely attainable.

Some State commenters (*e.g.* AASHTO, NYSDOT, and Wisconsin) suggested that the allowable maximum distance a near-road monitoring probe can be from the target road be increased from 50 meters to something wider, such as 200 meters. Conversely, there were some State, environmental, and industry commenters (*e.g.* NESCAUM,[24] Group Against Smog and Pollution, and Air Quality Research and Logistics) who suggested that the proposed range was appropriate, or, as suggested by both NESCAUM and the Group Against Smog and Pollution, the allowable distance should be reduced to as close as 30 or 20 meters to the nearest edge of the traffic lanes of the target road segment, respectively.

EPA believes that increasing the allowable distance above 50 meters would compromise the intent of near-road monitoring. As was noted in the proposal and this document, the ISA (2.5.4 and 4.3.6) and REA (7.3.2) indicate that on-road, mobile source derived NO_2 exhibits a peak concentration on or very near the source road, and those concentrations decay over a variable but relatively short distance back to near area-wide or background (upwind of the target road) concentrations. Literature values indicate that the distance required for NO_2 concentrations to return to near area-wide or background concentrations away from major roadways can range up to 500 meters, but the peak concentrations are occurring on or very near the source roadway. The behavior of NO_2 concentrations and the actual distance over which concentrations return to near area-wide or background levels is variable, and highly dependent on topography, roadside features, meteorology, and the related photochemical reactivity conditions (Baldauf *et al.,* 2008; Beckerman *et al.,* 2007; Clements *et al.,* 2008; Gilbert *et al.,* 2003; Hagler *et al.,* 2009; Rodes and Holland, 1980; Singer *et al.,* 2003; Zhou and Levy, 2007). Therefore, monitor probe placement at increasing distances from a road, such as 200 meters, will correspondingly decrease the potential for sampling maximum concentrations of NO_2 due to the traffic on the target road. Baldauf *et al.* (2009) indicate that monitoring probes would ideally be situated between 10 and 20 meters from the nearest traffic lane for near-road pollutant monitoring.

Regarding the comments suggesting required monitor probes be closer than 50 meters, EPA believes the allowable distance of 50 meters that a near-road NO_2 probe can be from the target road provides enough flexibility for the logistical issues that can occur on a case-by-case basis, which is inherent in monitoring site placement, while not sacrificing the potential to monitor the peak NO_2 concentrations. However, in light of the information provided here on how NO_2 peak concentrations can decay over relatively short distances away from roads, EPA strongly encourages States to place near-road sites, or at least monitor probes, as close as safely possible to target roads to increase the probability of measuring the peak NO_2 concentrations that occur in the near-road environment, again noting that Baldauf *et al.* (2009) indicate that monitor probes would ideally be situated between 10 and 20 meters from the nearest traffic lane for near-road pollutant monitoring.

EPA also proposed that required near-road NO_2 monitor probes shall have no obstructions in the fetch between the monitor probe and roadway traffic such as noise barriers or vegetation higher than the monitor probe height. EPA expects that when a State makes a measurement in determining whether an NO_2 inlet probe is no greater than 50 meters away, horizontally, from the outside nearest edge of the traffic lanes of the target road segment, that the measurement would likely represent a path to the monitor probe that is normal to the target road. However, EPA notes that the monitor probe will likely be influenced by various parts of the target road segment that are at a relative angle compared to the normal transect between the road and the monitor probe. EPA is not adjusting the wording of this requirement, but does intend for States to consider more than one linear pathway between the target road and the monitor probe being clear of obstructions when considering candidate site locations.

EPA received comments on the solicitation for comment on requiring near-road monitoring sites to be placed on the downwind side of the target road where the commenters (*e.g.* NACAA,[25] NESCAUM, and the Clean Air Council) encouraged such a requirement. Conversely, other commenters (*e.g.,* Air Quality and Logistics and NYSDEC suggested that such a requirement may be overly restrictive and not necessary. For example, NYSDEC stated that "It is important to avoid making the monitor siting criteria too restrictive. It is very likely that in some CBSAs, finding suitable locations near the busiest road segments will not be possible. It is also important to remember that the NO_2 monitoring instrumentation provides data continuously. Sites located downwind of sources will likely be impacted more frequently than the sites located upwind particularly when the sites are more than 50 meters from the source, and are preferred, but either side of the road will be downwind some of the time. Many of the highest NO_2 concentrations are also likely to occur during inversion periods and during calm meteorological conditions when the upwind-downwind designations have little meaning."

EPA noted in its proposal that research literature indicates that in certain cases, mobile source derived pollutant concentrations, including NO_2, can be detected upwind of roads, above background levels, due to a phenomenon called upwind meandering. Kalthoff *et al.* (2007) indicates that mobile source derived pollutants can meander upwind on the order of tens of meters, mainly due to vehicle induced turbulence. Further, Beckerman *et al.* (2008) note that near-road pollutant concentrations on the predominantly upwind side of their study sites dropped off to near background levels within the first 50 meters, but were above background in this short and variable upwind range, which could be due, at least in part, to vehicle induced turbulence. This upwind meandering characteristic of pollutants in the near-road environment provides an additional basis for locating near-road sites within 50 meters of target road segments, but also reduces the absolute need to be downwind of the road. EPA believes that very few, if any, near-road sites would be able to be situated in a location that was always downwind. For example, a hypothetical

[24] NESCAUM officially supported the alternative network design; however, they made suggestions regarding the near-road network in the event EPA finalized the proposed two-tier network design.

[25] NACAA made a statement containing many concerns about the near-road monitoring component proposal which included a passage regarding the lack of requiring sites to be downwind. They expressed concern in "* * * allowing upwind siting of monitors over a wide range of horizontal and vertical distances from the road * * *".

site may have winds routinely out of several different cardinal directions throughout the year, without one being a dominant direction. As a result, given variable meteorology, for some period of a year, a given near-road site may not be downwind of the target road, no matter which side of the road it is on. Therefore, EPA is not finalizing a requirement that near-road sites must be climatologically downwind of the target road segment because of the additional limitations this introduces to finding potential site candidates in exchange for what may be a small increase in the opportunity to monitor peak NO_2 concentrations. However, EPA encourages States to place monitors in the climatologically downwind direction whenever possible, in an attempt to measure the peak NO_2 concentrations more often than not. One way States may identify where the predominantly downwind location might be for candidate sites could be to use portable meteorological devices to characterize meteorological tendencies, in addition to evaluating other available meteorological data sources.

EPA proposed that required near-road NO_2 monitor probes be located within 2 to 7 meters above the ground, as is required for microscale $PM_{2.5}$ and PM_{10} sites. EPA also proposed that monitor probe placement on noise barriers or buildings, where the inlet probe height is no less than 2 meters and no more than 7 meters above the target road, will be acceptable, so long as the inlet probe is at least 1 meter vertically or horizontally away (in the direction of the target road) from any supporting wall or structure. NESCAUM commented that "EPA needs to reconcile near-roadway NO_2 probe height requirements with the existing micro-scale near-roadway CO probe height requirement of 2.5 to 3.5 meters above prevailing terrain. NESCAUM supports using this existing height for all near-roadway pollution monitors, as it minimizes probe height effects on measurements, and allows for proper measurement of collocated particle number concentration (which requires a very short inlet, *i.e.,* on the order of inches) and CO." NYSDEC commented that "The height requirement may not be practical for road segments in dense urban areas where existing buildings heights may exceed 7 meters. The requirement to maintain a 1 meter clearance from a supporting wall or structure may not be adequate for taller walls often found in urban areas. These walls can create down washing and street canyon effects which will make the resulting data less representative of nearby areas and will make interpretation of the resulting data difficult. However, there will need to be consistency between similar site settings." Finally, EPA received comments from some health groups (*e.g.,* ALA, EJ, EDF, and NRDC) who commented that "the lower end of the proposed height of 2 to 7 meters appears to capture the highest NO_2 concentrations, and more accurately represents human exposure at the breathing zone."

In the proposal, EPA noted that near-road monitoring sites will be adjacent to a variety of road types, where some target roads will be on an even plane with the monitoring station, while others may be cut roads (*i.e.,* below the plane of the monitoring station) or fill and open elevated roads (*i.e.,* where the road plane is above the monitoring station). EPA recognizes that consistency across sites with regard to probe height is desirable, and consistency with microscale, urban canyon CO sites might also be desirable. However, as was noted in the earlier discussion on "downwind" site placements, it is important to avoid making the monitor siting criteria too restrictive. An allowable range between 2 and 7 meters provides more flexibility in site installation, which EPA considers important because of the variety of siting situations each State may have to deal with for each individual site. While EPA agrees that a tighter allowable range such as 2.5 to 3.5 meters would reduce site to site variability and keep probes nearer the microscale siting requirements of CO, the wider range of 2 to 7 meters still provides an adequate amount of site to site consistency. EPA may also address this issue through forthcoming guidance, where an increased consistency for probe heights in similar situations such as urban canyons may be a site implementation goal, within the required 2 to 7 meter probe height range. Further, EPA believes that although certain situations, as noted by NYSDEC, may exist where the 1 meter clearance from walls or structures may be problematic near taller buildings or walls, this requirement is consistent with similar such clearance requirements for microscale CO sites in similar such situations that exist in urban canyons.

In the proposed rule, EPA proposed in the siting criteria language that the subsequent residence time of the pollutant in the sample line between the inlet probe and the analyzer cannot exceed 20 seconds. EPA received comments from Air Quality Research and Logistics regarding guidelines for maximum allowable inlet length and sample residence time, where they stated that "* * * the fast photodynamic O_3-NO_X equilibrium may occur in darkened sample lines at residence times of 10–20 seconds (Butcher *et al.* 1971; Ridley *et al.* 1988; Parrish *et al.* 1990). EPA should correct this apparent error by specifying much lower maximum residence times (*e.g.,* 1–2 seconds) or accounting for this effect by reporting 'corrected' values in error by no more than the allowed rounding convention (*e.g.,* ±1 ppb)."

EPA notes that in 40 CFR Part 58 Appendix E, paragraph (9)(c), states that sample probes for reactive gas analyzers, particularly NO_Y monitors, at NCore monitoring sites must have a sample residence time less than 20 seconds. EPA believes this rule is also appropriate for NO_2 monitors, particularly if a monitor inlet manifold is extended away from the main monitoring shelter. EPA does agree that shorter sample residence time in the inlet manifold is desirable. Although we do not believe it appropriate to require residence times on the order of 1 to 2 seconds, and do not believe correcting values is appropriate (which was not a concept which was proposed), we do encourage States to use best practices in selecting non-reactive manifold materials, and to install sampling manifolds in an efficient manner that minimizes sample residence time. While EPA proposed this concept in the preamble to the proposed rule, we did not include it in the proposed regulatory text. The final rule includes regulatory text on this subject at 40 CFR Part 58 Appendix E, paragraph (9)(c).

c. Conclusions on Near-Road Siting Criteria

We are finalizing the near-road NO_2 monitor siting criteria, as proposed, where (1) required near-road NO_2 monitor probes shall be as near as practicable to the outside nearest edge of the traffic lanes of the target road segment; but shall not be located at a distance greater than 50 meters, in the horizontal, from the outside nearest edge of the traffic lanes of the target road segment, (2) required near-road NO_2 monitor probes shall have an unobstructed air flow, where no obstacles exist at or above the height of the monitor probe, between the monitor probe and the outside nearest edge of the traffic lanes of the target road segment, (3) required near-road NO_2 monitors are required to have sampler inlets between 2 and 7 meters above ground level, and (4) residence time of NO_2 in the sample line between the

inlet probe and the analyzer does not exceed 20 seconds.

8. Area-Wide Monitor Site Selection and Siting Criteria

The following paragraphs provide background, rationale, and details for the final changes to the site selection and monitor siting criteria for required area-wide monitoring sites.

a. Proposed Area-Wide Monitor Site Selection and Siting Criteria

EPA proposed that sites required as part of the second tier of the NO_2 monitoring network design, known as the area-wide monitoring component, be sited to characterize the highest expected NO_2 concentrations at the neighborhood and larger (area-wide) spatial scales in a CBSA.

b. Comments

While most commenters who supported area-wide monitoring did so with regard to the adoption of the alternative area-wide network design rather than as part of the proposed approach, only a few commented on the actual sites and siting criteria. The Dow Chemical Company suggested that area-wide sites should be located at least 1,000 meters away from any major roads or intersections to ensure that the concentration of NO_2 measured is representative of an area-wide concentration instead of peak near-road concentrations.

EPA notes that in order for an NO_2 monitoring site to be classified as a neighborhood (or larger) spatial scale site, it must meet the roadway set-back requirements in Table E–1 of 40 CFR Part 58 Appendix E. EPA believes that this existing set-back table is appropriate to use to ensure that any NO_2 site that may be intended as an area-wide site will be sufficiently distanced from any major road. For example, an NO_2 monitoring site may be considered neighborhood scale if it is 10 or more meters from the edge of the nearest traffic lane of a road with 10,000 or less AADT counts.

c. Conclusions on Area-Wide Monitor Site Selection and Siting Criteria

We are finalizing the requirement that any sites required as part of the second tier of the NO_2 monitoring network design, known as the area-wide monitoring component, be sited to characterize the highest expected NO_2 concentrations at the neighborhood and larger (area-wide) spatial scales in a CBSA.

9. Meteorological Measurements

The following paragraphs provide background, rationale, and details for the final changes to the requirement of meteorological monitoring at near-road monitoring sites.

a. Proposed Meteorological Measurements

In further support of characterizing the peak NO_2 concentrations occurring in the near-road environment, EPA proposed to require three-dimensional anemometry, providing wind vector data in the horizontal and vertical planes, along with temperature and relative humidity measurements, at all required near-road monitoring sites.

b. Comments

EPA received comments from the South Carolina Department of Health and Environmental Control commented that the recording of air turbulence data at near-road monitoring stations should be encouraged but not required. Other States (*e.g.,* Alaska, North Carolina, and Wisconsin) provided comments that did not support the proposed meteorological measurement requirements, noting issues with costs, problems siting the probe nearer to structures and to the ground than is typically done, and that the averaging period required to better understand turbulence (through anemometry data) in the near-road environment requires a much higher frequency than what is typically reported.

EPA is removing the proposed requirements that would have required meteorological monitoring at near-road NO_2 monitoring stations. However, EPA strongly encourages States to do some meteorological monitoring to better characterize the conditions under which they are acquiring NO_2 data. The near-road microscale environment is complex, and understanding the turbulent dispersion that may be affecting NO_2 measurements, along with having a basic understanding of from which direction the measured NO_2 concentrations are coming from, which are very informative in the effort to fully understand the data being collected. At a minimum, basic anemometry data would be useful in identifying whether the site is upwind, downwind, or otherwise oriented, relative to the target road.

c. Conclusions on Meteorological Measurements

We are not finalizing the proposal to require three-dimensional anemometry, providing wind vector data in the horizontal and vertical planes, along with temperature and relative humidity measurements, at all required near-road monitoring sites.

C. Data Reporting

The following paragraphs provide background, rationale, and details for the final changes to the data reporting requirements, data quality objectives, and measurement uncertainty.

1. Proposed Data Quality Objectives and Measurement Uncertainty

In the proposal, EPA noted that State and local monitoring agencies are required to report hourly NO, NO_2, and NO_X data to AQS within 90 days of the end of each calendar quarter. We also noted that many agencies also voluntarily report their pre-validated data on an hourly basis to EPA's real time AIRNow data system, where the data may be used by air quality forecasters to assist in ozone forecasting. We believe these data reporting procedures are appropriate to support the revised primary NO_2 NAAQS.

EPA proposed to develop data quality objectives (DQOs) for the proposed NO_2 network. We proposed a goal for acceptable measurement uncertainty for NO_2 methods to be defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 15 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

2. Comments

EPA received comments from the State of Missouri, supporting the proposed DQOs and goals for measurement uncertainty, and from North Carolina, suggesting that measurement uncertainty goals match those of the NCore multi-pollutant network.

EPA agrees that it is desirable to have measurement uncertainty goals that match that of other pollutants. EPA originally proposed the goals for precision and bias under consideration that there may be a need to account for potential increased uncertainty in 1-hour near-road NO_2 data. However, we agree with the suggestion from the State of North Carolina, and are changing the goals for acceptable measurement uncertainty for NO_2 methods to be defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 10 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent. These goals match the existing goals for NO_2 and are consistent with historical measurement uncertainty goals.

3. Conclusions on Data Quality Objectives and Measurement Uncertainty

We are finalizing the approach to develop data quality objectives, and are changing the proposed goal for measurement uncertainty, where the goals for acceptable measurement uncertainty for NO_2 methods to be defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 10 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

IV. Appendix S—Interpretation of the Primary NAAQS for Oxides of Nitrogen and Revisions to the Exceptional Events Rule

The EPA proposed to add Appendix S, Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen, to 40 CFR part 50 in order to provide data handling procedures for the proposed NO_2 1-hour primary standard and for the existing NO_2 annual primary standard. The proposed Appendix S detailed the computations necessary for determining when the proposed 1-hour and existing annual primary NO_2 NAAQS are met. The proposed Appendix S also addressed data reporting, data completeness considerations, and rounding conventions.

Two versions of Appendix S were proposed. The first applied to a 1-hour primary standard based on the annual 4th high value form, while the second applied to a 1-hour primary standard based on the 99th percentile daily value form.

The final version of Appendix S is printed at the end of this notice and applies to an annual primary standard and a 1-hour primary standard based on the 98th percentile daily value form. Appendix S is based on the near-roadway approach to the setting the level of the 1-hour standard and to siting monitors. As such, these versions place no geographical restrictions on which monitoring sites' concentration data can and will be compared to the 1-hour standard when making nonattainment determinations and other findings related to attainment or violation of the standard.

The EPA is amending and moving the provisions of 40 CFR 50.11 related to data completeness for the existing annual primary standard to the new Appendix S, and adding provisions for the proposed 1-hour primary standard. Substantively, the data handling procedures for the annual primary standard in Appendix S are the same as the existing provisions in 40 CFR 50.11 for that standard, except for an addition of a cross-reference to the Exceptional Events Rule, the addition of Administrator discretion to consider otherwise incomplete data complete, and the addition of a provision addressing the possibility of there being multiple NO_2 monitors at one site. The procedures for the 1-hour primary standard are entirely new.

The EPA is also making NO_2-specific changes to the deadlines, in 40 CFR 50.14, by which States must flag ambient air data that they believe have been affected by exceptional events and submit initial descriptions of those events, and the deadlines by which States must submit detailed justifications to support the exclusion of that data from EPA determinations of attainment or nonattainment with the NAAQS. The deadlines now contained in 40 CFR 50.14 are generic, and are not always appropriate for NO_2 given the anticipated schedule for the designations of areas under the final NO_2 NAAQS.

The purpose of a data interpretation appendix in general is to provide the practical details on how to make a comparison between multi-day and possibly multi-monitor ambient air concentration data and the level of the NAAQS, so that determinations of compliance and violation are as objective as possible. Data interpretation guidelines also provide criteria for determining whether there are sufficient data to make a NAAQS level comparison at all. The regulatory language for the pre-existing annual NO_2 NAAQS, originally adopted in 1977, contained data interpretation instructions only for the issue of data completeness. This situation contrasts with the situations for ozone, $PM_{2.5}$, PM_{10}, and most recently Pb for which there are detailed data interpretation appendices in 40 CFR part 50 addressing more issues that can arise in comparing monitoring data to the NAAQS.

A. Interpretation of the Primary NAAQS for Oxides of Nitrogen for the Annual Primary Standard

The purpose of a data interpretation rule for the NO_2 NAAQS is to give effect to the form, level, averaging time, and indicator specified in the regulatory text at 40 CFR 50.11, anticipating and resolving in advance various future situations that could occur. Appendix S provides common definitions and requirements that apply to both the annual and the 1-hour primary standards for NO_2. The common requirements concern how ambient data are to be reported, what ambient data are to be considered (including the issue of which of multiple monitors' data sets will be used when more than one monitor has operated at a site), and the applicability of the Exceptional Events Rule to the primary NO_2 NAAQS.

The proposed Appendix S also addressed several issues in ways which are specific to the individual primary NO_2 standards, as described below.

1. Proposed Interpretation of the Annual Standard

The proposed data interpretation provisions for the annual standard are consistent with the pre-existing instructions included along with the statement of the level and form of the standard in 40 CFR 50.11. These are the following: (1) At least 75% of the hours in the year must have reported concentration data. (2) The available hourly data are arithmetically averaged, and then rounded (not truncated) to whole parts per billion. (3) The design value is this rounded annual average concentration. (4) The design value is compared with the level of the annual primary standard (expressed in parts per billion).

In the proposal, EPA noted that it would be possible to introduce additional steps for the annual primary standard which in principle could make the design value a more reliable indicator of actual annual average concentration in cases where some monitoring data have been lost. For example, averaging within a calendar quarter first and then averaging across quarters could help compensate for uneven data capture across the year. For some aspects of the data interpretation procedures for some other pollutants, the current data interpretation appendices do contain such additional steps. The proposed provisions for the proposed 1-hour NO_2 standard also incorporated some such features.

2. Comments on Interpretation of the Annual Standard

We received four comments, all from State agencies, on data interpretation for the annual NO_2 standard. Of the four commenters, two recommended the use of a weighted annual mean to appropriately implement the annual primary standard. Two other commenters asserted that there is no strong seasonality in NO_2 concentrations, and that therefore there is no need to use a weighted annual mean or to require data completeness quarter-by-quarter.

3. Conclusions on Interpretation of the Annual Standard

Upon investigating the issue of NO_2 seasonality using data from AQS as part of considering the comments, we have found that there are notable variations in quarterly mean NO_2 concentrations. It is therefore quite possible that an unweighted annual mean calculated without a quarter-by-quarter data completeness requirement might not represent the true annual mean as well as a weighted annual mean calculated with a quarter-by-quarter completeness requirement. However, the current practice of requiring 75% completeness of all of the hours in the year and calculating the annual mean without weighting has been retained in the final rule, because of its simplicity and because we believe it will not interfere with effective implementation of the annual NAAQS. No area presently is nonattainment for or comes close to violating the annual standard. Therefore, the choice between the two approaches can only have a practical effect, if any, on whether at some time in the future an area is determined to be newly violating the annual standard. If a monitor has a complete and valid design value below the standard using the unweighted mean approach (with only an annual data completeness requirement) but the design value would be considered incomplete and invalid under a hypothetical weighted mean approach (with a quarterly completeness requirement), the monitor would in either case be considered not to be violating and its data would not be the basis for a nonattainment designation. If a monitor has a design value above the standard using the unweighted annual mean approach but is incomplete with respect to a hypothetical quarterly completeness requirement, then the two approaches would have different implications for the determination of a violation. A quarterly completeness requirement would make a finding of violation impossible, unless the Administrator chose to treat the data as if complete under another provision of the final rule. The unweighted annual mean approach would allow but not force a finding of violation, because the Administrator will have discretion to make any such findings because there will be no mandatory round of designations for the annual standard given that the annual standard has not been revised in this review. The Administrator will be able to consider the representativeness of the unweighted annual mean when deciding whether to make a discretionary nonattainment redesignation. Given that the annual standard requires only one year of monitoring data for the calculation of a design value, little time will be lost if the Administrator chooses to work with a State to obtain a new design value based on more complete and/or seasonally balanced monitoring data.

B. Interpretation of the Primary NAAQS for Oxides of Nitrogen 1-Hour Primary Standard

1. Proposed Interpretation of the 1-Hour Standard

With regard to data completeness for the 1-hour primary standard with a 4th highest daily value form, the proposed Appendix followed past EPA practice for other NAAQS pollutants by requiring that in general at least 75% of the monitoring data that should have resulted from following the planned monitoring schedule in a period must be available for the key air quality statistic from that period to be considered valid. For the 1-hour primary NO_2 NAAQS, the key air quality statistics are the daily maximum 1-hour concentrations in three successive years. It is important that sampling within a day encompass the period when concentrations are likely to be highest and that all seasons of the year are well represented. Hence, the 75% requirement was proposed to be applied at the daily and quarterly levels.

Recognizing that there may be years with incomplete data, the proposed text provided that a design value derived from incomplete data would nevertheless be considered valid in either of two situations.

First, if the design value calculated from at least four days of monitoring observations in each of these years exceeds the level of the 1-hour primary standard, it would be valid. This situation could arise if monitoring was intermittent but high NO_2 levels were measured on enough hours and days for the mean of the three annual 4th high values to exceed the standard. In this situation, more complete monitoring could not possibly have indicated that the standard was actually met.

Second, we proposed a diagnostic data substitution test which was intended to identify those cases with incomplete data in which it nevertheless is very likely, if not virtually certain, that the daily 1-hour design value would have been observed to be below the level of the NAAQS if monitoring data had been minimally complete.

It should be noted that one possible outcome of applying the proposed substitution test is that a year with incomplete data may nevertheless be determined to not have a valid design value and thus to be unusable in making 1-hour primary NAAQS compliance determinations for that 3-year period.

Also, we proposed that the Administrator have general discretion to use incomplete data based on case-specific factors, either at the request of a State or at her own initiative. Similar provisions exist already for some other NAAQS.

The second version of the proposed Appendix S contained proposed interpretation procedures for a 1-hour primary standard based on the 99th percentile daily value form. The 4th high daily value form and the 99th percentile daily value form would yield the same design value in a situation in which every hour and day of the year has reported monitoring data, since the 99th percentile of 365 daily values is the 4th highest value. However, the two forms diverge if data completeness is 82% or less, because in that case the 99th percentile value is the 3rd highest (or higher) value, to compensate for the lack of monitoring data on days when concentrations could also have been high.

Logically, provisions to address possible data incompleteness under the 99th percentile daily value form should be somewhat different from those for the 4th highest form. With a 4th highest form, incompleteness should not invalidate a design value that exceeds the standard, for reasons explained above. With the 99th percentile form, however, a design value exceeding the standard stemming from incomplete data should not automatically be considered valid, because concentrations on the unmonitored days could have been relatively low, such that the actual 99th percentile value for the year could have been lower, and the design value could have been below the standard. The second proposed version of Appendix S accordingly had somewhat different provisions for dealing with data incompleteness. One difference was the addition of another diagnostic test based on data substitution, which in some cases can validate a design value based on incomplete data that exceeds the standard.

The second version of the proposed Appendix S provided a table for determining which day's maximum 1-hour concentration will be used as the 99th percentile concentration for the year. The proposed table is similar to one used now for the 24-hour $PM_{2.5}$ NAAQS, which is based on a 98th percentile form, but adjusted to reflect

a 99th percentile form for the 1-hour primary NO_2 standard. The proposed Appendix S also provided instructions for rounding (not truncating) the average of three annual 99th percentile hourly concentrations before comparison to the level of the primary NAAQS.

2. Comments on Interpretation of the 1-Hour Standard

Three commenters expressed the view that the 75% completion per quarter requirement should apply with respect to the 1-hour standard. A fourth commenter recommended that the requirement be increased to 82%. Another person commented that the requirement of 75% of the hours in a day is too stringent. The commenter noted that it would be inappropriate not to count the day if the maximum concentration observed in the hours measured is sufficiently high to make a difference with regard to compliance with the NAAQS. A comment was received that the substitution test should not be included, on the grounds that nonattainment should not be declared without irrefutable proof. This commenter also said that the same completeness requirement as used for nonattainment should be used for attainment. We received one comment that the computation of design values where multiple monitors are present at a site should be averaged and not taken from a designated primary monitor.

3. Conclusions on Interpretation of the 1-Hour Standard

Consistent with the Administrator's decision to adopt a 98th percentile form for the 1-hour NAAQS, the final version of Appendix S is based on that form. Table 1 has been revised from the version that was proposed, so that it results in the selection of the 98th percentile value rather than the 99th percentile value.

We agree with the three comments expressing the view that the requirement for 75% data completeness per quarter should apply with respect to the 1-hour standard. A fourth comment recommended that the requirement be increased to 82%. We believe 82% is too stringent because of the number of monitors that would not achieve such a requirement and we believe that 75% captures the season. We agree that an incomplete day should be counted if the maximum concentration observed in the hours measured is sufficiently high to make a difference with regard to compliance with the NAAQS, and we have accounted for that in section 3.2.c.i by validating the design value if it is above the level of the primary 1-hour standard when at least 75 percent of the days in each quarter have at least one reported hourly value. We agree that substitution should not be used for the establishment of attainment/nonattainment. The commenter who remarked on this issue appears not to have understood that the specific proposed substitution tests have essentially zero probability of making a clean area fail the NAAQS, or vice versa, because the substituted values are chosen to be conservative against such an outcome. As noted in section 3.2(c)(i), when substitution is used, the 3-year design value based on the data actually reported, not the "test design value", shall be used as the valid design value.

In the course of considering the above comment regarding data substitution tests to be used in cases of data incompleteness, EPA has realized that there could be some cases of data incompleteness in which the proposed procedure for calculating the 1-hour design value might result in an in appropriately low design value. As proposed, only days with measurements for at least 75% of the hours in the day would be considered in any way when identifying the 99th percentile value (99th for purposes of the adopted NAAQS). However, there could be individual hours in other, incompletely monitored days that had measured concentrations higher than the identified 98th percentile value from the complete days. It would be inappropriate not to consider those hours and days in some way. However, if all days with at least one hourly concentration were used to identify the 99th percentile value without any regard to their incompleteness, this could also result in a design value that is biased low because the extra days could increase the number of "annual number of days with valid data" enough to affect which row of Table 1 of Appendix S is used. It could, for example, result in the 8th highest ranked daily maximum concentration being identified as the 98th percentile value (based on Table 1 of Appendix S) rather than a higher ranked concentration; this would also be inappropriate because days which were not monitored intensively enough to give a reasonable likelihood of catching the maximum hourly concentration would in effect be treated as if they had such a likelihood. For example, 50 days with only one hourly measurement during a time of day with lower concentrations would "earn" the State the right to drop one notch lower in the ranking of days when identifying the 98th percentile day, inappropriately. The final version of Appendix S solves this problem by providing that two procedures be used to identifying the 98th percentile value, the first based only on days with 75% data completeness and the second based on all days with at least one hourly measurement. The final design value is the higher of the two values that result from these two procedures.

With regard to situations with multiple monitors operating at one site, we think as discussed in the proposal, that designation of a primary monitor is preferable to averaging the data from multiple monitors based on administrative simplicity and transparency for the public, and is unbiased with respect to compliance outcome provided the State is able to make the designation only before any data has been collected.

Finally, as proposed, the final version of Appendix S has a cross reference to the Exceptional Events Rule (40 CFR 50.14) with regard to the exclusion of data affected by exceptional events. In addition, the specific steps for including such data in completeness calculations while excluding such data from actual design value calculations is clarified in Appendix S.

C. Exceptional Events Information Submission Schedule

The Exceptional Events Rule at 40 CFR 50.14 contains generic deadlines for a State to submit to EPA specified information about exceptional events and associated air pollutant concentration data. A State must initially notify EPA that data has been affected by an event by July 1 of the year after the data are collected; this is done by flagging the data in AQS and providing an initial event description. The State must also, after notice and opportunity for public comment, submit a demonstration to justify any claim within 3 years after the quarter in which the data were collected. However, if a regulatory decision based on the data (for example, a designation action) is anticipated, the schedule to flag data in AQS and submit complete documentation to EPA for review is foreshortened, and all information must be submitted to EPA no later than one year before the decision is to be made.

These generic deadlines are suitable for the period after initial designations have been made under a NAAQS, when the decision that may depend on data exclusion is a redesignation from attainment to nonattainment or from nonattainment to attainment. However, these deadlines present problems with respect to initial designations under a newly revised NAAQS. One problem is

that some of the deadlines, especially the deadlines for flagging some relevant data, may have already passed by the time the revised NAAQS is promulgated. Until the level and form of the NAAQS have been promulgated a State does not know whether the criteria for excluding data (which are tied to the level and form of the NAAQS) were met on a given day. The only way a State could guard against this possibility is to flag all data that could possibly be eligible for exclusion under a future NAAQS. This could result in flagging far more data than will eventually be eligible for exclusion. EPA believes this is an inefficient use of State and EPA resources, and is potentially confusing and misleading to the public and regulated entities. Another problem is that it may not be feasible for information on some exceptional events that may affect final designations to be collected and submitted to EPA at least one year in advance of the final designation decision. This could have the unintended consequence of EPA designating an area nonattainment as a result of uncontrollable natural or other qualified exceptional events.

When Section 50.14 was revised in March 2007, EPA was mindful that designations were needed under the recently revised $PM_{2.5}$ NAAQS, so exceptions to the generic deadline were included for $PM_{2.5}$. The EPA was also mindful that similar issues would arise for subsequent new or revised NAAQS. The Exceptional Events Rule at section 50.14(c)(2)(v) indicates "when EPA sets a NAAQS for a new pollutant, or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging data for initial designation of areas for those NAAQS."

EPA proposed revised exceptional event data flagging and documentation deadlines in FR 34404 [**Federal Register**/Vol. 74, No. 134/Wednesday, July 15, 2009/Proposed Rules] and invited comments from the public. The Agency received no comments related to the revised proposed schedule for NO_2 exceptional event data flagging and documentation deadlines.

For the specific case of NO_2, EPA anticipates that initial designations under the revised NAAQS may be made by January 22, 2012 based on air quality data from the years 2008–2010. (*See* Section VI below for more detailed discussion of the designation schedule and what data EPA intends to use.) If final designations are made by January 22, 2012, all events to be considered during the designations process must be flagged and fully documented by States one year prior to designations, by January 22, 2011. This date also coincides with the Clean Air Act deadline for Governors to submit to EPA their recommendations for designating all areas of their States.

The final rule text at the end of this notice shows the changes that will apply if a revised NO_2 NAAQS is promulgated by January 22, 2010, and designations are made two years after promulgation of a NO_2 NAAQS revision.

Table 1 below summarizes the data flagging and documentation deadlines corresponding to the two year designation schedule discussed in this section. If the promulgation date for a revised NO_2 NAAQS occurs on a different date than January 22, 2010, EPA will revise the final NO_2 exceptional event flagging and documentation submission deadlines accordingly to provide States with reasonably adequate opportunity to review, identify, and document exceptional events that may affect an area designation under a revised NAAQS.

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/standard/(level)/promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
NO_2/1-Hour Standard (100 PPB)	2008	July 1, 2010[a]	January 22, 2011.
	2009	July 1, 2010	January 22, 2011.
	2010	April 1, 2011[a]	July 1, 2011.[a]

[a] Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

V. Designation of Areas

A. Proposed Process

The CAA requires EPA and the States to take steps to ensure that the new or revised NAAQS are met following promulgation. The first step is to identify areas of the country that do not meet the new or revised NAAQS. Section 107(d)(1) provides that, "By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised NAAQS for any pollutant under section 109, the Governor of each State shall * * * submit to the Administrator a list of all areas (or portions thereof) in the State" that should be designated as nonattainment, attainment, or unclassifiable for the new NAAQS. Section 107(d)(1)(B)(i) further provides, "Upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation."

No later than 120 days prior to promulgating designations, EPA is required to notify States of any intended modifications to their designations as EPA may deem necessary. States then have an opportunity to comment on EPA's tentative decision. Whether or not a State provides a recommendation, the EPA must promulgate the designation that it deems appropriate.

Accordingly, Governors must submit their initial NO_2 designation recommendations to EPA no later than January 2011. If the Administrator intends to modify any State's recommendation, the EPA will notify the Governor no later than 120 days prior to designations in January 2012. States that believe the Administrator's modification is inappropriate will have an opportunity to demonstrate why they believe their recommendation is more appropriate before designations are finalized.

B. Public Comments

Several industry commenters requested that EPA slow the timeline for implementing a near-roadway monitoring network and designating roadway areas because they believe EPA lacks significant information about the implementation and performance of a national, near-roadway monitoring network. Two commenters also requested that if a near-roadway monitoring network is deployed, that 1-hour NO_2 standards be made more

lenient until the next review period so that more information will be available about near-roadway NO_2 concentrations before a stringent standard is selected.

A response to commenters' requests that EPA slow the monitoring implementation schedule and the request that EPA make the 1-hour NO_2 standard more lenient until the next review period are addressed in sections III.B.5 and II.F.4.D, respectively.

Section 110(d)(1)(B) requires the EPA to designate areas no later than 2 years following promulgation of a new or revised NAAQS (*i.e.,* by January 2012). While the CAA provides the Agency an additional third year from promulgation of a NAAQS to complete designations in the event that there is insufficient information to make NAAQS compliance determinations, we anticipate that delaying designations for an additional year would not result in significant new data to inform the initial designations. A near-roadway monitoring network is not expected to be fully deployed until January 2013 therefore, EPA must proceed with initial designations using air quality data from the existing NO_2 monitoring network. Because none of the current NO_2 monitors are sited to measure near-roadway ambient air, we expect that most areas in the country with current NO_2 monitors will not violate the new NO_2 NAAQS. In the event that a current NO_2 monitor indicates a violation of the revised standards, EPA intends to designate such areas "nonattainment" no later than 2 years following promulgation of the revised standards. We intend to designate the rest of the country as "unclassifiable" for the revised NO_2 NAAQS until sufficient air quality data is collected from a near-roadway monitoring network. Once the near-roadway network is fully deployed and 3 years of air quality data are available, the EPA has authority under the CAA to redesignate areas as appropriate from "unclassifiable" to "attainment" or "nonattainment." We anticipate that sufficient data to conduct designations would be available after 2015.

A number of commenters, largely from industry groups, focused on the concern that a near-roadway monitoring network would lead to regional nonattainment on the basis of high NO_2 concentrations found near roadways. These commenters requested that any future nonattainment areas be limited to the area directly surrounding roadways found to have above-standard NO_2 concentrations.

The CAA requires that any area that does not meet a NAAQS or that contributes to a violation in a nearby area that does not meet the NAAQS be designated "nonattainment." States and EPA will need to determine which sources and activities contribute to a NAAQS violation in each area. Depending on the circumstances in each area this may include sources and activities in areas beyond the area directly surrounding a major roadway. EPA intends to issue nonattainment area boundary guidance after additional information is gathered on the probable contributors to violating near-roadway NO_2 monitors.

C. Final Designations Process

The EPA intends to promulgate initial NO_2 designations by January 2012 (2 years after promulgation of the revised NAAQS). Along with today's action EPA is also promulgating new monitoring rules that focus on roadways. As noted in section III, States must site required NO_2 near-roadway monitors and have them operational by January 1, 2013. States will need an additional 3 years thereafter to collect air quality data in order to determine compliance with the revised NAAQS. This means that a full set of air quality data from the new network will not be available until after 2015. Since we anticipate that data from the new network will not be available prior to the CAA designation deadlines discussed above, the EPA intends to complete initial NO_2 designations by January 2012 using the 3 most recent years of quality-assured air quality data from the current monitoring network, which would be for the years 2008–2010. The EPA will designate as "nonattainment" any areas with NO_2 monitors recording violations of the revised NO_2 NAAQS. We intend to designate all other areas of the country as "unclassifiable" to indicate that there is insufficient data to determine whether or not they are attaining the revised NO_2 NAAQS.

Once the NO_2 monitors are positioned in locations meeting the near-roadway siting requirements and monitoring data become available, the Agency has authority under section 107(d)(3) of the CAA to redesignate areas as appropriate from "unclassifiable" to "attainment" or "nonattainment." The EPA intends to issue guidance on the factors that States should consider when determining nonattainment boundaries after additional information is gathered on the probable contributors to violating near-roadway NO_2 monitors.

VI. Clean Air Act Implementation Requirements

This section of the preamble discusses the Clean Air Act (CAA) requirements that States and emissions sources must address when implementing new or revised NO_2 NAAQS based on the structure outlined in the CAA and existing rules.[26] EPA may provide additional guidance in the future, as necessary, to assist States and emissions sources to comply with the CAA requirements for implementing new or revised NO_2 NAAQS.

The CAA assigns important roles to EPA, States, and, in specified circumstances, Tribal governments to achieve the NAAQS. States have the primary responsibility for developing and implementing State Implementation Plans (SIPs) that contain State measures necessary to achieve the air quality standards in each area. EPA provides assistance to States by providing technical tools, assistance, and guidance, including information on the potential control measures that may help areas meet the standards.

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once they have been established by EPA. Under section 110 of the CAA, 42 U.S.C. 7410, and related provisions, States are required to submit, for EPA approval, SIPs that provide for the attainment and maintenance of such standards through control programs directed at sources of NO_2 emissions. If a State fails to adopt and implement the required SIPs by the time periods provided in the CAA, the EPA has responsibility under the CAA to adopt a Federal Implementation Plan (FIP) to assure that areas attain the NAAQS in an expeditious manner.

The States, in conjunction with EPA, also administer the prevention of significant deterioration (PSD) program for NO_2 and nonattainment new source review (NSR). *See* sections 160–169 of the CAA. In addition, Federal programs provide for nationwide reductions in emissions of NO_2 and other air pollutants under Title II of the Act, 42 U.S.C. 7521–7574, which involves controls for automobiles, trucks, buses, motorcycles, nonroad engines, and aircraft emissions; the new source performance standards (NSPS) for stationary sources under section 111 of the CAA, 42 U.S.C. 7411.

CAA Section 301(d) authorizes EPA to treat eligible Indian Tribes in the same manner as States (TAS) under the CAA and requires EPA to promulgate regulations specifying the provisions of the statute for which such treatment is appropriate. EPA has promulgated these

[26] Since EPA is retaining the annual standard without revision, the discussion in this section relates to implementation of the proposed 1-hour standard, rather than the annual standard.

regulations—known as the Tribal Authority Rule or TAR—at 40 CFR Part 49. *See* 63 FR 7254 (February 12, 1998). The TAR establishes the process for Indian Tribes to seek TAS eligibility and sets forth the CAA functions for which TAS will be available. Under the TAR, eligible Tribes may seek approval for all CAA and regulatory purposes other than a small number of functions enumerated at section 49.4. Implementation plans under section 110 are included within the scope of CAA functions for which eligible Tribes may obtain approval. Section 110(o) also specifically describes Tribal roles in submitting implementation plans. Eligible Indian Tribes may thus submit implementation plans covering their reservations and other areas under their jurisdiction.

Under the CAA and TAR, Tribes are not, however, required to apply for TAS or implement any CAA program. In promulgating the TAR EPA explicitly determined that it was not appropriate to treat Tribes similarly to States for purposes of, among other things, specific plan submittal and implementation deadlines for NAAQS-related requirements. 40 CFR 49.4(a). In addition, where Tribes do seek approval of CAA programs, including section 110 implementation plans, the TAR provides flexibility and allows them to submit partial program elements, so long as such elements are reasonably severable—*i.e.,* "not integrally related to program elements that are not included in the plan submittal, and are consistent with applicable statutory and regulatory requirements." 40 CFR 49.7.

To date, very few Tribes have sought TAS for purposes of section 110 implementation plans. However, some Tribes may be interested in pursuing such plans to implement today's proposed standard. As noted above, such Tribes may seek approval of partial, reasonably severable plan elements, or they may seek to implement all relevant components of an air quality program for purposes of meeting the requirements of the Act. In several sections of this preamble, EPA describes the various roles and requirements States will address in implementing today's proposed standard. Such references to States are generally intended to include eligible Indian Tribes to the extent consistent with the flexibility provided to Tribes under the TAR. Where Tribes do not seek TAS for section 110 implementation plans, EPA will promulgate Federal implementation plans as "necessary or appropriate to protect air quality." 40 CFR 49.11(a). EPA also notes that some Tribes operate air quality monitoring networks in their areas. For such monitors to be used to measure attainment with this primary NAAQS for NO_2, the criteria and procedures identified in this rule would apply.

A. Classifications

1. Proposal

Section 172(a)(1)(A) of the CAA authorizes EPA to classify areas designated as nonattainment for the purpose of applying an attainment date pursuant to section 172(a)(2), or for other reasons. In determining the appropriate classification, EPA may consider such factors as the severity of the nonattainment problem and the availability and feasibility of pollution control measures (*see* section 172(a)(1)(A) of the CAA). The EPA may classify NO_2 nonattainment areas, but is not required to do so. The primary reason to establish classifications is to set different deadlines for each class of nonattainment area to complete the planning process and to provide for different attainment dates based upon the severity of the nonattainment problem for the affected area. However, the CAA separately establishes specific planning and attainment deadlines for certain pollutants including NO_2 in sections 191 and 192: 18 months from nonattainment designation for the submittal of an attainment plan, and as expeditiously as possible, but no later than 5 years from nonattainment designation for areas to attain the standard. In the proposal, EPA stated its belief that classifications are unnecessary in light of these relatively short deadlines.

2. Public Comments

One commenter stated that they disagree with EPA's decision not to impose non-attainment classifications on areas with measured near-road NO_2 concentrations in excess of the new NO_2 standard, and urged EPA to provide a graduated non-attainment classification system for the new standard. According to the commenter, "a classification system defining higher levels of non-attainment with increasingly stringent requirements at those levels is one that allows for finer calibration of air quality regulatory response defined at the Federal level."

As stated in the proposed rule, Section 192(a), of part D, of the CAA specifically provides an attainment date for areas designated as nonattainment for the NO_2 NAAQS. Therefore, EPA has legal authority to classify NO_2 nonattainment areas, but the 5-year attainment date addressed under section 192(a) cannot be extended pursuant to section 172(a)(2)(D). Based on this limitation, EPA proposed not to establish classifications within the 5-year interval for attaining any new or revised NO_2 NAAQS. It is also EPA's belief that given the short deadlines that States have to develop and submit SIP's and for areas to achieve emissions reductions in order to attain the standard within the 5 year attainment period, a graduated classifications system would not be appropriate. Therefore, EPA is using it's discretion under the CAA not to establish classifications.

3. Final

EPA is not making any changes to the discussion on classifications in the proposed rule. Therefore, there will be no classifications for the revised NO_2 NAAQS.

B. Attainment Dates

The maximum deadline by which an area is required to attain the NO_2 NAAQS is determined from the effective date of the nonattainment designation for the affected area. For areas designated nonattainment for the revised NO_2 NAAQS, SIPs must provide for attainment of the NAAQS as expeditiously as practicable, but no later than 5 years from the date of the nonattainment designation for the area (*see* section 192(a) of the CAA). The EPA will determine whether an area has demonstrated attainment of the NO_2 NAAQS by evaluating air quality monitoring data consistent with the form of the NAAQS for NO_2 if revised, which will be codified at 40 CFR part 50, Appendix F.

1. Attaining the NAAQS

a. Proposal

In order for an area to be redesignated as attainment, the State must comply with the five requirements as provided under section 107(d)(3)(E) of the CAA. This section requires that:

—EPA must have determined that the area has met the NO_2 NAAQS;
—EPA has fully approved the State's implementation plan;
—The improvement in air quality in the affected area is due to permanent and enforceable reductions in emissions;
—EPA has fully approved a maintenance plan for the area; and
—The State(s) containing the area have met all applicable requirements under section 110 and part D.

b. Final

EPA did not receive any comments on this aspect of the proposed rule and is not making any changes to the

discussion on attaining the NAAQS in the proposed rule.

2. Consequences of Failing To Attain by the Statutory Attainment Date

a. Proposal

Any NO_2 nonattainment area that fails to attain by its statutory attainment date would be subject to the requirements of sections 179(c) and (d) of the CAA. EPA is required to make a finding of failure to attain no later than 6 months after the specified attainment date and publish a notice in the **Federal Register.** The State would be required to submit an implementation plan revision, no later than one year following the effective date of the **Federal Register** notice making the determination of the area's failure to attain, which demonstrates that the standard will be attained as expeditiously as practicable, but no later than 5 years from the effective date of EPA's finding that the area failed to attain. In addition, section 179(d)(2) provides that the SIP revision must include any specific additional measures as may be reasonably prescribed by EPA, including "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts."

b. Final

EPA did not receive any comments on this aspect of the proposed rule and is not making any changes to the discussion on consequences of failing to attain by the statutory attainment date in the proposed rule.

C. Section 110(a)(2) NAAQS Infrastructure Requirements

1. Proposal

Section 110(a)(2) of the CAA requires all States to develop and maintain a solid air quality management infrastructure, including enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling, and adequate personnel, resources, and legal authority. Section 110(a)(2)(D) also requires State plans to prohibit emissions from within the State which contribute significantly to nonattainment or maintenance areas in any other State, or which interfere with programs under part C to prevent significant deterioration of air quality or to achieve reasonable progress toward the national visibility goal for Federal class I areas (national parks and wilderness areas).

Under section 110(a)(1) and (2) of the CAA, all States are required to submit SIPs to EPA which demonstrate that basic program elements have been addressed within 3 years of the promulgation of any new or revised NAAQS. Subsections (A) through (M) of section 110(a)(2) listed below, set forth the elements that a State's program must contain in the SIP.[27] The list of section 110(a)(2) NAAQS implementation requirements are the following:

- Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to provide for setting up and operating ambient air quality monitors, collecting and analyzing data and making these data available to EPA upon request.
- Program for enforcement of control measures: Section 110(a)(2)(C) requires SIPs to include a program providing for enforcement of measures and regulation and permitting of new/modified sources.
- Interstate transport: Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in the State from contributing significantly to nonattainment in another State or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility.
- Adequate resources: Section 110(a)(2)(E) requires States to provide assurances of adequate funding, personnel and legal authority for implementation of their SIPs.
- *Stationary source monitoring system:* Section 110(a)(2)(F) requires States to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports to EPA.
- *Emergency power:* Section 110(a)(2)(G) requires States to include contingency plans, and adequate authority to implement them, for emergency episodes in their SIPs.
- *Provisions for SIP revision due to NAAQS changes or findings of inadequacies:* Section 110(a)(2)(H) requires States to provide for revisions of their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is inadequate.
- *Consultation with local and Federal government officials:* Section 110(a)(2)(J) requires States to meet applicable local and Federal government consultation requirements when developing SIP and reviewing preconstruction permits.
- *Public notification of NAAQS exceedances:* Section 110(a)(2)(J) requires States to adopt measures to notify the public of instances or areas in which a NAAQS is exceeded.
- *PSD and visibility protection:* Section 110(a)(2)(J) also requires States to adopt emissions limitations, and such other measures, as may be necessary to prevent significant deterioration of air quality in attainment areas and protect visibility in Federal Class I areas in accordance with the requirements of CAA Title I, part C.
- *Air quality modeling/data:* Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and submission of data to EPA upon request.
- *Permitting fees:* Section 110(a)(2)(L) requires the SIP to include requirements for each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.
- *Consultation and participation by affected local government:* Section 110(a)(2)(M) requires States to provide for consultation and participation by local political subdivisions affected by the SIP.

2. Final

EPA did not receive any comments on this aspect of the proposed rule and is not making any changes to the discussion on section 110(a)(2) NAAQS infrastructure requirements in the proposed rule.

D. Attainment Planning Requirements

1. Nonattainment Area SIPs

a. Proposal

Any State containing an area designated as nonattainment with respect to the NO_2 NAAQS must develop for submission a SIP meeting the requirements of part D, Title I, of the CAA, providing for attainment by the applicable statutory attainment date (*see* sections 191(a) and 192(a) of the CAA). As indicated in section 191(a) all components of the NO_2 part D SIP must be submitted within 18 months of the effective date of an area's designation as nonattainment.

Section 172 of the CAA includes general requirements for all designated nonattainment areas. Section 172(c)(1)

[27] Two elements identified in section 110(a)(2) are not listed below because, as EPA interprets the CAA, SIPs incorporating any necessary local nonattainment area controls would not be due within 3 years, but rather are due at the time the nonattainment area planning requirements are due. These elements are: (1) Emission limits and other control measures, section 110(a)(2)(A), and (2) Provisions for meeting part D, section 110(a)(2)(I), which requires areas designated as nonattainment to meet the applicable nonattainment planning requirements of part D, title I of the CAA.

requires that each nonattainment area plan "provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology (RACT)), and shall provide for attainment of the national primary ambient air quality standards." States are required to implement RACM and RACT in order to attain "as expeditiously as practicable".

Section 172(c) requires States with nonattainment areas to submit a SIP for these areas which contains an attainment demonstration that shows that the affected area will attain the standard by the applicable statutory attainment date. The State must also show that the area will attain the standards as expeditiously as practicable, and it must include an analysis of whether implementation of reasonably available measures will advance the attainment date for the area.

Part D SIPs must also provide for reasonable further progress (RFP) (*see* section 172(c)(2) of the CAA). The CAA defines RFP as "such annual incremental reductions in emissions of the relevant air pollution as are required by part D, or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date." (*See* section 171 of the CAA.) Historically, for some pollutants, RFP has been met by showing annual incremental emission reductions sufficient to maintain generally linear progress toward attainment by the applicable attainment date.

All NO_2 nonattainment area SIPs must include contingency measures which must be implemented in the event that an area fails to meet RFP or fails to attain the standards by its attainment date. (*See* section 172(c)(9).) These contingency measures must be fully adopted rules or control measures that take effect without further action by the State or the Administrator. The EPA interprets this requirement to mean that the contingency measures must be implemented with only minimal further action by the State or the affected sources with no additional rulemaking actions such as public hearings or legislative review.

Emission inventories are also critical for the efforts of State, local, and Federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants including NO_2. Section 191(a) in conjunction with section 172(c) requires that areas designated as nonattainment for NO_2 submit an emission inventory to EPA no later than 18 months after designation as nonattainment. In the case of NO_2, sections 191(a) and 172(c) also require that States submit periodic emission inventories for nonattainment areas. The periodic inventory must include emissions of NO_2 for point, nonpoint, mobile (on-road and non-road), and area sources.

b. Public Comments

Several commenters indicated that EPA should take steps to ensure that States actually require mobile source emissions reductions in order to attain the NO_2 NAAQS as opposed to controlling point sources. Another commenter went further and stated that States be required to control on-road emissions as opposed to emissions from stationary sources and in particular EGUs. This commenter also indicated that EPA should delay nonattainment designations until States had a cost effective means of reducing on-road emissions of NO_2.

EPA cannot require States to develop a SIP that only addresses one type of source, in this case on-road mobile sources. States may select appropriate control measures to attain the NAAQS and EPA must approve them if they otherwise meet all applicable requirements of the Act. *See* CAA 116. EPA expects that States will evaluate a range of control measures that will reduce NO_2 emissions within the time allowed to attain the standard. This would include the emissions reductions attributable to Federal controls on on-road and non-road mobile sources, and controls that they have put in place to reduce NO_X emissions in order to attain the 8-hour ozone NAAQS and/or the $PM_{2.5}$ NAAQS. If these existing controls are not sufficient for an area to reach attainment with the NO_2 NAAQS, EPA would expect the State to implement additional control measures that would bring the area into attainment by the deadline. For a designation based on data from a near roadway monitor EPA would expect the States to give primary consideration to controlling emissions from on-road sources; however, it is likely that other types of sources contribute to the concentrations that are measured at a near roadway monitor and a State may decide to implement controls on these other contributing sources.

The Clean Air Act requires that EPA finalize designations within two years after a NAAQS is revised unless the available air quality data is insufficient to make designations by that time. In that case, EPA must finalize designations within three years after the NAAQS is revised. As discussed elsewhere in today's final rule, EPA believes that it has sufficient data to make designations within two years and that most areas will be designated as unclassifiable at that time. Taking the additional year provided by the CAA would not allow additional data from the new near roadway monitors to be factored into the designations process in any event. Therefore, it is EPA's intention to designate areas within two years as required by the Act. EPA intends to redesignate areas once it has sufficient data from the new monitoring network to designate areas as clearly attaining or not attaining the standard.

c. Final

The EPA is not making any changes to the discussion on nonattainment area SIPs in the proposed rule.

2. New Source Review and Prevention of Significant Deterioration Requirements

a. Proposal

The Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs contained in parts C and D of Title I of the CAA govern preconstruction review of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by the Administrator.[28] The EPA rules addressing these programs can be found at 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S. States which have areas designated as nonattainment for the NO_2 NAAQS must submit, as a part of the SIP due 18 months after an area is designated as nonattainment, provisions requiring permits for the construction and operation of new or modified stationary sources anywhere in the nonattainment area. SIPs that address the PSD requirements related to attainment areas are due no later than 3 years after the promulgation of a revised NAAQS for NO_2.

The NSR program is composed of three different permit programs:

- Prevention of Significant Deterioration (PSD).
- Nonattainment NSR (NA NSR).
- Minor NSR.

The PSD program applies when a major source, that is located in an area that is designated as attainment or

[28] The terms "major" and "minor" define the size of a stationary source, for applicability purposes, in terms of an annual emissions rate (tons per year, tpy) for a pollutant. Generally, a minor source is any source that is not "major." "Major" is defined by the applicable regulations—PSD or nonattainment NSR.

unclassifiable for any criteria pollutant, is constructed, or undergoes a major modification.[29] The nonattainment NSR program applies on a pollutant-specific basis when a major source constructs or modifies in an area that is designated as nonattainment for that pollutant. The minor source NSR program addresses both major and minor sources which undergo construction or modification activities that do not qualify as major, and it applies, as necessary to assure attainment, regardless of the designation of the area in which a source is located.

The PSD requirements include but are not limited to the following:

- Installation of Best Available Control Technology (BACT);
- Air quality monitoring and modeling analyses to ensure that a project's emissions will not cause or contribute to a violation of any NAAQS or maximum allowable pollutant increase (PSD increment);
- Notification of Federal Land Manager of nearby Class I areas; and
- Public comment on permit.

Nonattainment NSR requirements include but are not limited to:

- Installation of Lowest Achievable Emissions Rate (LAER) control technology;
- Offsetting new emissions with creditable emissions reductions;
- A certification that all major sources owned and operated in the State by the same owner are in compliance with all applicable requirements under the CAA;
- An alternative siting analysis demonstrating that the benefits of a proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification; and
- Public comment on the permit.

Minor NSR programs must meet the statutory requirements in section 110(a)(2)(C) of the CAA which requires "* * * regulation of the modification and construction of any stationary source * * * as necessary to assure that the [NAAQS] are achieved." Areas which are newly designated as nonattainment for the NO_2 NAAQS as a result of any changes made to the NAAQS will be required to adopt a nonattainment NSR program to address major sources of NO_2 where the program does not currently exist for the NO_2 NAAQS and may need to amend their minor source program as well. Prior to adoption of the SIP revision addressing major source nonattainment NSR for NO_2 nonattainment areas, the requirements of 40 CFR part 51, appendix S may apply.

b. Public Comments

One commenter claimed that EPA's setting of a more stringent standard, *i.e.,* short-term NO_2 NAAQS, could have important implications for NSR and PSD and title V permits. Another commenter indicated that the promulgation of a new 1-hr NO_2 short-term standard could create the need for a short-term PSD increment. Another commenter stated that a 1-hr NO_2 Significant Impact Level (SIL) should be developed.

The EPA acknowledges that a decision to promulgate a new short-term NO_2 NAAQS will clearly have implications for the air permitting process. The full extent of how a new short-term NO_2 NAAAQS will affect the NSR process will need to be carefully evaluated. First, major new and modified sources applying for NSR/PSD permits will initially be required to demonstrate that their proposed emissions increases of NO_X will not cause or contribute to a violation of either the annual or 1-hour NO_2 NAAQS and the annual PSD increment. In addition, we believe that section 166 of the CAA authorizes us to consider the need to promulgate a new 1-hour increment. Historically, EPA has developed increments for each applicable averaging period for which a NAAQS has been promulgated. However, increments for a particular pollutant do not necessarily need to match the averaging periods that have been established for NAAQS for the same pollutant. *Environmental Defense Fund, Inc.* v. *EPA,* 898 F.2d 183, 189–190 (DC Cir. 1990) ("* * * the 'goals and purposes' of the PSD program, set forth in 160, are not identical to the criteria on which the ambient standards are based.") Thus, we would need to evaluate the need for a new 1-hour NO_2 increment in association with the goals and purposes of the statutory PSD program requirements.

We also believe that there may be a need to revise the screening tools currently used under the NSR/PSD program for completing NO_2 analyses. These screening tools include the significant impact levels (SILs), as mentioned by one commenter, but also include the significant emissions rate for emissions of NO_X and the significant monitoring concentration (SMC) for NO_2. EPA intends to evaluate the need for possible changes or additions to each of these important screening tools for NO_X/NO_2 due to the addition of a 1-hour NO_2 NAAQS. If changes or additions are deemed necessary, EPA will propose any such changes for public notice and comment in a separate action.

c. Final

The EPA is not making any changes to the discussion concerning the requirements for NSR and PSD as stated in the proposed rule.

3. General Conformity

a. Proposal

Section 176(c) of the CAA, as amended (42 U.S.C. 7401 *et seq.*), requires that all Federal actions conform to an applicable implementation plan developed pursuant to section 110 and part D of the CAA. The EPA rules, developed under the authority of section 176(c) of the CAA, prescribe the criteria and procedures for demonstrating and assuring conformity of Federal actions to a SIP. Each Federal agency must determine that any actions covered by the general conformity rule conform to the applicable SIP before the action is taken. The criteria and procedures for conformity apply only in nonattainment areas and those areas redesignated attainment since 1990 ("maintenance areas") with respect to the criteria pollutants under the CAA:[30] carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particulate matter ($PM_{2.5}$ and PM_{10}), and sulfur dioxide (SO_2). The general conformity rules apply one year following the effective date of designations for any new or revised NAAQS.

The general conformity determination examines the impacts of direct and indirect emissions related to Federal actions. The general conformity rule provides several options to satisfy air quality criteria, such as modeling or offsets, and requires the Federal action to also meet any applicable SIP requirements and emissions milestones. The general conformity rule also requires that notices of draft and final general conformity determinations be provided directly to air quality regulatory agencies and to the public by publication in a local newspaper.

b. Final

EPA did not receive any comments on this aspect of the proposed rule and is not making any changes to the discussion concerning general conformity stated in the proposed rule.

[29] In addition, the PSD program applies to non-criteria pollutants subject to regulation under the Act, except those pollutants regulated under section 112 and pollutants subject to regulation only under section 211(o).

[30] Criteria pollutants are those pollutants for which EPA has established a NAAQS under section 109 of the CAA.

4. Transportation Conformity

a. Proposal

Transportation conformity is required under CAA section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and Federally supported highway and transit projects will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Transportation conformity applies to areas that are designated nonattainment and maintenance for transportation-related criteria pollutants: Carbon monoxide (CO), ozone (O_3), nitrogen dioxide (NO_2), and particulate matter ($PM_{2.5}$ and PM_{10}). Transportation conformity for a revised NO_2 NAAQS does not apply until one year after the effective date of a nonattainment designation. (*See* CAA section 176(c)(6) and 40 CFR 93.102(d)).

EPA's Transportation Conformity Rule (40 CFR 51.390, and Part 93, Subpart A establishes the criteria and procedures for determining whether transportation activities conform to the SIP. The EPA is not making changes to the Transportation Conformity rule in this rulemaking. However, in the future, EPA will review the need to conduct a rulemaking to establish any new or revised transportation conformity tests that would apply under a revision to the NO_2 NAAQS for transportation plans, TIPs, and applicable highway and transit projects.

b. Public Comments

Several commenters stated that transportation conformity could stop the funding of highway and transit projects in NO_2 nonattainment areas. These commenters stated that if an area fails to demonstrate conformity, it enters a conformity lapse and only certain types of projects can be funded during a lapse. The commenters further stated that the NO_2 NAAQS will require more areas to determine conformity for the first time. The commenters also expressed concern that the NO_2 NAAQS proposal did not contain sufficient information to understand to what extent revisions to the NAAQS, and the NO_2 monitoring requirements, will result in transportation conformity requirements for individual transportation projects such as the need for a hot-spot analysis. The commenters further stated that hot-spot analyses could result in needless delays for transportation improvement projects.

With regard to the comment that more areas will have to demonstrate conformity for the first time due to the revisions to the NO_2 NAAQS, given that today's final rule is requiring that near roadway monitoring be carried out in urban areas with populations greater than 350K, EPA believes that most areas with such populations that would be designated nonattainment for NO_2 are already designated nonattainment or maintenance for one or more of the other transportation-related criteria pollutants (ozone, $PM_{2.5}$, PM_{10} and carbon monoxide). As such, these areas would have experience in making transportation conformity determinations. If areas with no conformity experience are designated nonattainment for the NO_2 NAAQS, EPA and U.S. DOT would be available to assist areas in implementing the transportation conformity requirements.

The commenter expressed concern that transportation conformity could stop highway and transit funding because areas could experience a conformity lapse and in such cases only certain types of projects could be funded. A conformity lapse occurs when an area misses a deadline for a required conformity determination. A new nonattainment area must demonstrate conformity within one year after the effective date of its designation. For any areas designated nonattainment for the revised NO_2 NAAQS in early-2012, they would have to determine conformity within one year of the effective date of that designation which would be in early-2013. If that date was missed, a lapse would occur and only projects exempt from conformity such as safety projects, transportation control measures in an approved SIP for the area and projects or project phases that were approved by U.S. DOT before the lapse began can proceed during the lapse. EPA's experience in implementing the 1997 ozone and $PM_{2.5}$ NAAQS shows that nearly all areas make their initial conformity determinations within the one-year grace period. Areas can also lapse if they fail to determine conformity by an applicable deadline such as determining conformity within two years after motor vehicle emissions budgets are found adequate. However, areas that miss one of these conformity deadlines have a one-year grace period before the lapse goes into effect. During the grace period, the area can continue to advance projects from the transportation plan and transportation improvement program. EPA's experience is that areas generally are able to make a conformity determination before the end of the grace period.

The commenter expressed concern that the NO_2 NAAQS proposal did not contain sufficient detail concerning possible project-level requirements for transportation projects and that any requirements for hot-spot analyses could needlessly delay transportation projects. As EPA indicated in the NPRM, EPA is considering whether to revise the transportation conformity rule to establish requirements that would apply to transportation plans, transportation improvement programs and/or transportation projects in NO_2 nonattainment and maintenance areas. If EPA concludes that the conformity rule must be revised in light of the final NO_2 NAAQS, we will conduct notice and comment rulemaking to accomplish the revisions. At that time interested parties will have the opportunity to comment on any transportation conformity NPRM. This is the same course of action that EPA has taken with respect to revising the transportation conformity rule for the ozone and $PM_{2.5}$ NAAQS.

With regard to the commenter's assertion that a requirement for hot-spot analyses for individual projects would needlessly delay transportation projects, EPA disagrees. First, CAA section 176(c)(1)(B) requires that transportation projects not cause new violations or make existing violations worse, or delay timely attainment or cause an interim milestone to be missed. EPA would only impose a hot-spot requirement for projects in NO_2 nonattainment and maintenance areas if they are necessary to comply with CAA conformity requirements and therefore are needed to protect public health by reducing exposures to unhealthy levels of NO_2 that could be created by the implementation of a proposed highway or transit project. The public would be exposed to unhealthy levels of NO_2 if a highway or transit project caused a new violation of the NO_2 NAAQS, made an existing violation worse, or delayed timely attainment or delayed achieving an interim emissions milestone. If any delay in the project did occur, it would not be viewed as needless as it occurred for the important purpose of protecting the exposed public's health. Second, EPA does not agree that requiring a hot-spot analysis would needlessly delay projects in NO_2 nonattainment areas. Such hot-spot analyses, if they are eventually required, generally would be done as part of the NEPA process, which these projects are already subject to; therefore, conducting an NO_2 hot-spot analysis would not be introducing a new step to a project's approval process, but rather would add one additional analysis which must be completed as part of an existing project approval process.

c. Final

EPA is not making any changes to the discussion concerning transportation conformity as stated in the proposed rule.

VII. Communication of Public Health Information

Information on the public health implications of ambient concentrations of criteria pollutants is currently made available primarily through EPA's Air Quality Index (AQI) program. This section describes the conforming changes that were proposed, major comments received on these changes, EPA's responses to these comments and final decisions on the AQI breakpoints. Recognizing the importance of revising the AQI in a timely manner to be consistent with any revisions to the NAAQS, EPA proposed conforming changes to the AQI in connection with the final decision on the NO_2 NAAQS if revisions to the primary standard were promulgated. Conforming changes would include setting the 100 level of the AQI at the same level as the revised primary NO_2 NAAQS and also setting the other AQI breakpoints at the lower end of the AQI scale (*i.e.,* AQI values of 50 and 150). EPA did not propose to change breakpoints at the higher end of the AQI scale (from 200 to 500), which would apply to State contingency plans or the Significant Harm Level (40 CFR 51.16), because the information from this review does not inform decisions about breakpoints at those higher levels.

With regard to an AQI value of 50, the breakpoint between the good and moderate categories, EPA proposed to set this value to be between 0.040 and 0.053 ppm NO_2, 1-hour average. EPA proposed that the figure towards the lower end of this range would be appropriate if the standard is set towards the lower end of the proposed range for the standard (*e.g.* 80 ppb), while figures towards the higher end of the range would be more appropriate for standards set at the higher end of the range for the standard (*e.g.,* 100 ppb). EPA noted that historically this value is set at the level of the annual NAAQS, if there is one, or one-half the level of the short-term NAAQS in the absence of an annual NAAQS, and solicited comments on this range for an AQI of 50 and the appropriate basis for selecting an AQI of 50 within this range.

With regard to an AQI value of 150, the breakpoint between the unhealthy for sensitive groups and unhealthy categories, the range of 0.360 to 0.370 ppm NO_2, 1-hour average, represents the midpoint between the proposed range for the short-term standard and the level of an AQI value of 200 (0.64 ppm NO_2, 1-hour average). Therefore, EPA proposed to set the AQI value of 150 to be between 0.360 and 0.370 ppm NO_2, 1-hour average.

EPA received comments from several State environmental agencies and organizations of State and local agencies that generally expressed the view that the AQI was designed to provide the public with information about regional air quality and therefore it should be based on community-wide monitors. These commenters went on to state that using near-road NO_2 monitors for the AQI would present problems because they would not represent regional NO_2 concentrations and it would be difficult to communicate this type of information to the public using the AQI. Some expressed concern that NO_2 measured at near-roadway monitors could be the critical pollutant and could drive the AQI even though it may not represent air quality across the area. Other agencies expressed concern that there is currently no way to forecast ambient NO_2 levels near roadways. One State agency commented that the AQI is intended to represent air quality where people live, work and play.

EPA agrees with commenters that the AQI should represent regional air quality, and that measurements that apply to a limited area should not be used to characterize air quality across the region. Community-wide NO_2 monitors should be used to characterize air quality across the region. However, the AQI reporting requirements encourage, but do not require, the reporting of index values of sub-areas of an MSA. We agree with the commenter that stated the view that the AQI is intended to represent air quality where people live, work and play. To the extent that near-roadway monitoring occurs in areas where people live, work or play, EPA encourages reporting of the AQI for that specific sub-area of the MSA (64 FR 42548, August 4, 1999). We also agree that it may be difficult to communicate this type of information and we plan to work with State and local air agencies to figure out the best way to present this information to the public using the AQI. Air quality forecasting is recommended but not required (64 FR 42548, August 4, 1999). EPA will work with State agencies that want to develop a forecasting program.

With regard to the proposed breakpoints, EPA received few comments. The National Association of Clean Air Agencies commented that it would be confusing to the public to have an AQI value of 50 set below the level of the annual NO_2 standard. We agree with this comment, and therefore have decided that it is appropriate to set the AQI value of 50, the breakpoint between the good and moderate ranges, set at the numerical level of the annual standard, 53 ppb NO_2, 1-hour average. The AQI value of 100, the breakpoint between the moderate and unhealthy for sensitive groups category, is set at 100 ppb, 1-hour average, the level of the primary NO_2 NAAQS. EPA is setting an AQI value of 150, the breakpoint between the unhealthy for sensitive groups and unhealthy categories, at 0.360 ppm NO_2, 1-hour average.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it was deemed to "raise novel legal or policy issues." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared a Regulatory Impact Analysis (RIA) of the potential costs and benefits associated with this action. However, the CAA and judicial decisions make clear that the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, although an RIA has been prepared, the results of the RIA have not been considered in developing this final rule.

B. Paperwork Reduction Act

The information collection requirements in this final 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 Information Collection Request (ICR) document prepared by EPA for these revisions to part 58 has been assigned EPA ICR number 2358.02.

The information collected under 40 CFR part 53 (*e.g.,* test results, monitoring records, instruction manual, and other associated information) is needed to determine whether a candidate method intended for use in determining attainment of the National Ambient Air Quality Standards (NAAQS) in 40 CFR part 50 will meet

the design, performance, and/or comparability requirements for designation as a Federal reference method (FRM) or Federal equivalent method (FEM). We do not expect the number of FRM or FEM determinations to increase over the number that is currently used to estimate burden associated with NO_2 FRM/FEM determinations provided in the current ICR for 40 CFR part 53 (EPA ICR numbers 2358.01). As such, no change in the burden estimate for 40 CFR part 53 has been made as part of this rulemaking.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The amendments would revise the technical requirements for NO_2 monitoring sites, require the siting and operation of additional NO_2 ambient air monitors, and the reporting of the collected ambient NO_2 monitoring data to EPA's Air Quality System (AQS). The annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this ICR) is $3,261,007. Burden is defined at 5 CFR 1320.3(b). State, local, and Tribal entities are eligible for State assistance grants provided by the Federal government under the CAA which can be used for monitors and related activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

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

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Rather, this rule establishes national standards for allowable concentrations of NO_2 in ambient air as required by section 109 of the CAA. *American Trucking Ass'ns* v. *EPA,* 175 F.3d 1027, 1044–45 (DC cir. 1999) (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities). Similarly, the amendments to 40 CFR part 58 address the requirements for States to collect information and report compliance with the NAAQS and will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This 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 the private sector in any one year. The revisions to the NO_2 NAAQS impose no enforceable duty on any State, local or Tribal governments or the private sector. The expected costs associated with the monitoring requirements are described in EPA's ICR document, but those costs are not expected to exceed $100 million in the aggregate for any year. Furthermore, as indicated previously, in setting a NAAQS EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards. Because the Clean Air Act prohibits EPA from considering the types of estimates and assessments described in section 202 when setting the NAAQS, the UMRA does not require EPA to prepare a written statement under section 202 for the revisions to the NO_2 NAAQS. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

With regard to implementation guidance, the CAA imposes the obligation for States to submit SIPs to implement the NO_2 NAAQS. In this final rule, EPA is merely providing an interpretation of those requirements. However, even if this rule did establish an independent obligation for States to submit SIPs, it is questionable whether an obligation to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and section 191 of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of 2 U.S.C. 658 for purposes of the UMRA. Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under 2 U.S.C. 658.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no enforceable duty on any small governments.

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. The rule does not alter the relationship between the Federal government and the States regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of States to establish more stringent requirements if deemed necessary by a State. Furthermore, this rule does not impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on State, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this 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). It does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Tribes. The rule does not alter the relationship between the

Federal government and Tribes as established in the CAA and the TAR. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, this rule does not infringe existing Tribal authorities to regulate air quality under their own programs or under programs submitted to EPA for approval. Furthermore, this rule does not affect the flexibility afforded to Tribes in seeking to implement CAA programs consistent with the TAR, nor does it impose any new obligation on Tribes to adopt or implement any NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is an economically significant regulatory action as defined by Executive Order 12866, and EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children. The final rule will establish uniform national ambient air quality standards for NO_2; these standards are designed to protect public health with an adequate margin of safety, as required by CAA section 109. The protection offered by these standards may be especially important for asthmatics, including asthmatic children, because respiratory effects in asthmatics are among the most sensitive health endpoints for NO_2 exposure. Because asthmatic children are considered a sensitive population, we have evaluated the potential health effects of exposure to NO_2 pollution among asthmatic children. These effects and the size of the population affected are discussed in chapters 3 and 4 of the ISA; chapters 3, 4, and 8 of the REA, and sections II.A through II.E of this preamble.

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

This action is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (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. The purpose of this rule is to establish revised NAAQS for NO_2. The rule does not prescribe specific control strategies by which these ambient standards will be met. Such strategies will be developed by States on a case-by-case basis, and EPA cannot predict whether the control options selected by States will include regulations on energy suppliers, distributors, or users. Thus, EPA concludes that this rule is not likely to have any adverse energy effects.

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, section 12(d) (15 U.S.C. 27_2 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking involves technical standards. Therefore the Agency conducted a search to identify potential 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 the technical standard described in Section III.A of the preamble.

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

Executive Order 12898 (59 FR 7629; Feb. 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 will 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 effects on any population, including any minority or low-income population. The final rule will establish uniform national standards for NO_2 in ambient air.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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 a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on April 12, 2010.

References

Baldauf, R, Watkins N, Heist D, Bailey C, Rowley P, Shores R. (2009). Near-road air quality monitoring: Factors affecting network design and interpretation of data. *Air Qual. Atmos. Health.* 2:1–9.

Beckerman, B, Jerrett M, Brook JR, Verma DK, Arain MA, Finkelstein MM. (2008). Correlation of nitrogen dioxide with other traffic pollutants near a major expressway. *Atmos Environ.* 42:275–290.

Butcher, SS, Ruff RE. (1971). Effect of inlet residence time on analysis of atmospheric nitrogen oxides and ozone. *Anal. Chem.* 43:1890–1892.

Clements, A, Yuling J, Fraser MP, Yifang Z, Pudota J, DenBleyker A, Michel E, Collins DR, McDonald-Buller E, Allen DT. (2008). Air Pollutant Concentrations near Texas Roadways: Chemical Transformation of Pollutants. *Proceedings of the 101st Air & Waste Management Annual Conference,* Portland, OR.

Delfino, RJ, Zeiger RS, Seltzer JM, Street DH, McLaren CE. (2002). Association of asthma symptoms with peak particulate air pollution and effect modification by anti-inflammatory medication use. *Environ. Health Perspect.* 110:A607–A617.

EPA. (1993). Air Quality Criteria Document for the Oxides of Nitrogen. National Center for Environmental Assessment, Research Triangle Park, NC. EPA–600/8–91/049F. Available at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=40179.*

EPA. (2004). Air Quality Criteria for Particulate Matter (Final Report, Oct 2004). U.S. Environmental Protection Agency, Washington, DC, EPA 600/P–99/002aF–bF, *http://cfpub2.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

EPA. (2005). Review of the National Ambient Air Quality Standards for Particulate

Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. Office of Air Quality Planning and Standards, Research Triangle Park, NC. Available at: *http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.*

EPA. (2007a). Plan for Review of the Primary National Ambient Air Quality Standard for Nitrogen Dioxide. Available at: *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_pd.html.*

EPA. (2007b). Nitrogen Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment. Office of Air Quality Planning and Standards, Research Triangle Park, NC. Available at: *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_pd.html.*

EPA. (2007c). Review of the National Ambient Air Quality Standards for Pb: Policy Assessment of Scientific and Technical Information. OAQPS Staff paper. Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA–452/R–07–013. Available at: *http://www.epa.gov/ttn/naaqs/standards/pb/data/20071101_pb_staff.pdf.*

EPA. (2007d). Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information. OAQPS Staff paper. Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA–452/R–07–007a. Available at: *http://epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_sp.html.*

EPA. (2008a). ISA for Oxides of Nitrogen-Health Criteria. National Center for Environmental Assessment, Research Triangle Park, NC. Available at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=194645.*

EPA. (2008b). Risk and Exposure Assessment to Support the Review of the NO_2 Primary National Ambient Air Quality Standard. Office of Air Quality Planning and Standards, Research Triangle Park, NC.

Fehsenfeld, FC, Dickerson RR, Hübler G, Luke WT, Nunnermacker LJ, Williams EJ, Roberts JM, Calvert JG, Curran CM, Delany AC, Eubank CS, Fahey DW, Fried A, Gandrud BW, Langford AO, Murphy PC, Norton RB, Pickering KE, Ridley BA. (1987). A ground-based intercomparison of NO, NO_X, and NO_Y measurement techniques. J. Geophys. Res. [Atmos.] 92:14,710–14,722.

Folinsbee, LJ. (1992). Does nitrogen dioxide exposure increase airways responsiveness? *Toxicol Ind Health.* 8:273–283.

Gilbert, NL, Woodhouse S, Stieb DM, Brook JR. (2003). Ambient nitrogen dioxide and distance from a major highway. *Sci. Total Environ.* 312:43–6.

Gilbert, NL, Goldberg MS, Brook JR, Jerrett M. (2007). The influence of highway traffic on ambient nitrogen dioxide concentrations beyond the immediate vicinity of highways. *Atmos. Environ.* 41:2670–2673.

Goodman, JE, Chandalia JK, Thakali S, Seeley M. (2009). Meta-analysis of nitrogen dioxide exposure and airway hyper-responsiveness in asthmatics. *Crit. Rev. Toxicol.* 39:719–742.

Hagler, GSW, Baldauf RW, Thoma ED, Long TR, Snow RF, Kinsey JS, Oudejans L, Gullett BK. (2009). Ultrafine particles near a major roadway in Raleigh, North Carolina: Downwind attenuation and correlation with traffic-related pollutants. Atmos. Environ. 43:1229–1234.

Henderson, R. (2008). Letter to EPA Administrator Stephen Johnson: "Clean Air Scientific Advisory Committee (CASAC) Peer Review of EPA's Integrated Science Assessment (ISA) for Oxides of Nitrogen—Health Criteria (Second External Review Draft)." EPA–CASAC–08–015, June 25.

Hoek, G, Brunekreef B. (1994). Effects of low-level winter air pollution concentrations on respiratory health of Dutch children. *Environ. Res.* 64:136–150.

Ito, K, Thurston, GD, Silverman, RA. (2007). Characterization of $PM_{2.5}$, gaseous pollutants, and meteorological interactions in the context of time-series health effects models. *J. of Expos. Science and Environ. Epidemiology.* 17:S45–S60.

Jaffe, DH, Singer ME, Rimm AA. (2003). Air pollution and emergency department visits for asthma among Ohio Medicaid recipients, 1991–1996. *Environ. Res.* 91:21–28.

Janssen, NAH., van Vliet PHN, Asrts F, Harssema H, Brunekreef B. (2001). Assessment of exposure to traffic related air pollution of children attending schools near motorways. *Atmos. Environ.* 35:3875–3884.

Kalthoff, N, Baumer D, Corsmeier U, Kohler M, Vogel B. (2005). Vehicle-induced turbulence near a motorway, *Atmospheric Environment* 39:5737–5749.

Krewski, D, Burnett RT, Goldberg MS, Hoover K, Siemiatycki J, Jerrett M, Abrahamowicz M, White WH. (2000). Reanalysis of the Harvard Six Cities study and the American Cancer Society study of particulate air pollution and mortality: a special report of the Institute's Particle Epidemiology Reanalysis Project. Cambridge, MA: Health Effects Institute. Available: *http://pubs.healtheffects.org/view.php?id=6.*

Linn, WS, Shamoo DA, Anderson KR, Peng RC, Avol EL, Hackney JD, Gong H. (1996). Short-term air pollution exposures and responses in Los Angeles area schoolchildren. *J. Exposure Anal. Environ. Epidemiol.* 6: 449–472.

McClenny, WA, Williams EJ, Cohen RC, Stutz J. (2002). Preparing to measure the effects of the NO_X SIP Call—methods for ambient air monitoring of NO, NO_2, NO_Y, and individual NO_Z species. *J. Air Waste Manage. Assoc.* 52:542–562.

Mortimer, KM, Neas LM, Dockery DW, Redline S, Tager IB. (2002). The effect of air pollution on inner-city children with asthma. *Eur Respir J.* 19:699–705.

Moshammer, H, Hutter HP, Hauck H, Neuberger M. (2006). Low levels of air pollution induce changes of lung function in a panel of schoolchildren. *Eur. Respir. J.* 27:1138–1143.

New York Department of Health. (2006). A study of ambient air contaminants and asthma in New York City, Final Report Part B: Air contaminants and emergency department visits for asthma in the Bronx and Manhattan. Prepared for: The U.S. Department of Health and Human Services, Agency for Toxic Substance and Disease Registry.

Nunnermacker, LJ, Imre D, Daum PH, Kleinman L, Lee YN, Lee JH, Springston SR, Newman L, Weinstein-Lloyd J, Luke WT, Banta R, Alvarez R, Senff C, Sillman S, Holdren M, Keigley GW, Zhou X. (1998). Characterization of the Nashville urban plume on July 3 and July 18, 1995. *J. Geophys. Res. [Atmos.]* 103:28,129–28,148.

Parrish, DD, Hahn CH, Fahey DW, Williams EJ, Bollinger MJ, Hubler G, Buhr MP, Murphy PC, Trainer M, Hsie EY, Liu SC, Fehsenfeld FC. (1990). Systematic variations in the concentration of NO_X (NO plus NO_2) at Niwot Ridge, Colorado. *J. Geophys. Res.* 95:1817–1836.

Parrish, DD, Fehsenfeld FC. (2000). Methods for gas-phase measurements of ozone, ozone precursors and aerosol precursors. *Atmos. Environ.* 34:1921–1957.

Peacock, M. (2008). Letter to CASAC chair Rogene Henderson. September 8.

Peacock, JL, Symonds P, Jackson P, Bremner SA, Scarlett JF, Strachan DP, Anderson HR. (2003). Acute effects of winter air pollution on respiratory function in schoolchildren in southern England. *Occup. Environ. Med.* 60:82–89.

Peel, JL, Tolbert PE, Klein M, Metzger KB, Flanders WD, Knox T, Mulholland JA, Ryan PB, Frumkin H. (2005). Ambient air pollution and respiratory emergency department visits. *Epidemiology.* 16:164–174.

Ridley, BA, Carroll MA, Torres AL, Condon EP, Sachse GW, Hill GF, Gregory GL. (1988). An intercomparison of results from ferrous sulphate and photolytic converter techniques for measurements of NO_X made during the NASA GTE/CITE 1 aircraft program. *J. Geophys. Res.* 93:15,803–15,811.

Rizzo (2008). Investigation of how distributions of hourly nitrogen dioxide concentrations have changed over time in six cities. Nitrogen Dioxide NAAQS Review Docket (EPA–HQ–OAR–2006–092_2). Available at *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_rea.html.*

Rodes, CE and Holland DM. (1981). Variations of NO, NO_2, and O_3 concentrations downwind of a Los Angeles Freeway. *Atmos. Environ.* 15:243–250.

Roorda-Knape, MC, Janssen NAH, De Hartog JJ, Van Vliet PHN, Harssema H, Brunekreef B. (1998). Air pollution from traffic in city districts near major motorways. *Atmos. Environ.* 32:1921–1930.

Samet, J. (2008a). Letter to EPA Administrator Stephen Johnson: "Clean Air Scientific Advisory Committee's (CASAC) Peer Review of Draft Chapter 8 of EPA's *Risk and Exposure Assessment to Support the Review of the NO_2 Primary National Ambient Air Quality Standard.*" EPA–CASAC–09–001, October 2008.

Samet, J. (2008b). Letter to EPA Administrator Stephen Johnson: "Clean Air Scientific Advisory Committee's (CASAC) Review Comments on EPA's *Risk and Exposure Assessment to Support the Review of the NO_2 Primary National Ambient Air Quality Standard.*" EPA–CASAC–09–003, December 16.

Samet, J. (2009). Letter to EPA Administrator Lisa P. Jackson: "Comments and

Recommendations Concerning EPA's Proposed Rule for the Revision of the National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide." EPA–CASAC–09–014, September 9.

Schildcrout, JS, Sheppard L, Lumley T, Slaughter JC, Koenig JQ, Shapiro GG. (2006). Ambient air pollution and asthma exacerbations in children: an eight-city analysis. *Am J Epidemiol.* 164:505–517.

Schindler, C, Künzli N, Bongard JP, Leuenberger P, Karrer W, Rapp R, Monn C, Ackermann-Liebrich U. (2001). Short-term variation in air pollution and in average lung function among never-smokers. *Am. J. Respir. Crit. Care Med.* 163: 356–361.

Schwartz, J, Dockery DW, Neas LM, Wypij D, Ware JH, Spengler JD, Koutrakis P, Speizer FE, Ferris BG, Jr. (1994). Acute effects of summer air pollution on respiratory symptom reporting in children. *Am J Respir Crit Care Med.* 150:1234–1242.

Singer, B, Hodgson A, Hotchi T, Kim J. (2004). Passive measurement of nitrogen oxides to assess traffic-related pollutant exposure for the East Bay Children's Respiratory Health Study. *Atmos Environ.* 38:393–403.

Thompson, R. (2008). Nitrogen Dioxide (NO_2) Descriptive Statistics Tables. Memo to the NO_2 NAAQS docket. Available at *http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_rea.html.*

Tolbert, PE, Klein M, Peel JL, Sarnat SE, Sarnat JA. (2007). Multipollutant modeling issues in a study of ambient air quality and emergency department visits in Atlanta. *J. Exposure Sci. Environ. Epidemiol.* 17(Suppl. 2s): S29–S35.

Watkins, N. and Thompson, R. (2008). NO_X Network Review and Background. Memo to the NO_2 NAAQS docket.

Zhou, Y and Levy JI. (2007). Factors influencing the spatial extent of mobile source air pollution impacts: a meta-analysis. *BMC Public Health.* 7:89.

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 22, 2010.

Lisa P. Jackson,

Administrator.

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

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Section 50.11 is revised to read as follows:

§ 50.11 National primary and secondary ambient air quality standards for oxides of nitrogen (with nitrogen dioxide as the indicator).

(a) The level of the national primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion (ppb, which is 1 part in 1,000,000,000), annual average concentration, measured in the ambient air as nitrogen dioxide.

(b) The level of the national primary 1-hour ambient air quality standard for oxides of nitrogen is 100 ppb, 1-hour average concentration, measured in the ambient air as nitrogen dioxide.

(c) The level of the national secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter), annual arithmetic mean concentration.

(d) The levels of the standards shall be measured by:

(1) A reference method based on appendix F to this part; or

(2) By a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter.

(e) The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with Appendix S of this part for the annual standard.

(f) The 1-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of this part for the 1-hour standard.

(g) The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

■ 3. Section 50.14 is amended by adding an entry to the end of table in paragraph (c)(2)(vi) to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/ standard/ (level)/ promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
* * *	*	* * *	*
NO_2/1-Hour Standard (100 PPB)	2008	July 1, 2010 [a]	January 22, 2011.
	2009	July 1, 2010	January 22, 2011.
	2010	April 1, 2011 [a]	July 1, 2011 [a].

[a] Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

* * * * *

■ 4. Appendix S to Part 50 is added to read as follows:

Appendix S to Part 50—Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide)

1. General

(a) This appendix explains the data handling conventions and computations necessary for determining when the primary national ambient air quality standards for oxides of nitrogen as measured by nitrogen dioxide ("NO_2 NAAQS") specified in 50.11 are met. Nitrogen dioxide (NO_2) is measured in the ambient air by a Federal reference method (FRM) based on appendix F to this part or by a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter. Data handling and computation procedures to be used in making comparisons between reported NO_2 concentrations and the levels of the NO_2 NAAQS are specified in the following sections.

(b) Whether to exclude, retain, or make adjustments to the data affected by exceptional events, including natural events, is determined by the requirements and process deadlines specified in 50.1, 50.14 and 51.930 of this chapter.

(c) The terms used in this appendix are defined as follows:

Annual mean refers to the annual average of all of the 1-hour concentration values as defined in section 5.1 of this appendix.

Daily maximum 1-hour values for NO_2 refers to the maximum 1-hour NO_2 concentration values measured from midnight to midnight (local standard time) that are used in NAAQS computations.

Design values are the metrics (*i.e.*, statistics) that are compared to the NAAQS levels to determine compliance, calculated as specified in section 5 of this appendix. The design values for the primary NAAQS are:

(1) The annual mean value for a monitoring site for one year (referred to as the "annual primary standard design value").

(2) The 3-year average of annual 98th percentile daily maximum 1-hour values for a monitoring site (referred to as the "1-hour primary standard design value").

98th percentile daily maximum 1-hour value is the value below which nominally 98 percent of all daily maximum 1-hour concentration values fall, using the ranking and selection method specified in section 5.2 of this appendix.

Quarter refers to a calendar quarter.

Year refers to a calendar year.

2. Requirements for Data Used for Comparisons With the NO_2 NAAQS and Data Reporting Considerations

(a) All valid FRM/FEM NO_2 hourly data required to be submitted to EPA's Air Quality System (AQS), or otherwise available to EPA, meeting the requirements of part 58 of this chapter including appendices A, C, and E shall be used in design value calculations. Multi-hour average concentration values collected by wet chemistry methods shall not be used.

(b) When two or more NO_2 monitors are operated at a site, the State may in advance designate one of them as the primary monitor. If the State has not made this designation, the Administrator will make the designation, either in advance or retrospectively. Design values will be developed using only the data from the primary monitor, if this results in a valid design value. If data from the primary monitor do not allow the development of a valid design value, data solely from the other monitor(s) will be used in turn to develop a valid design value, if this results in a valid design value. If there are three or more monitors, the order for such comparison of the other monitors will be determined by the Administrator. The Administrator may combine data from different monitors in different years for the purpose of developing a valid 1-hour primary standard design value, if a valid design value cannot be developed solely with the data from a single monitor. However, data from two or more monitors in the same year at the same site will not be combined in an attempt to meet data completeness requirements, except if one monitor has physically replaced another instrument permanently, in which case the two instruments will be considered to be the same monitor, or if the State has switched the designation of the primary monitor from one instrument to another during the year.

(c) Hourly NO_2 measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

3. Comparisons With the NO_2 NAAQS

3.1 The Annual Primary NO_2 NAAQS

(a) The annual primary NO_2 NAAQS is met at a site when the valid annual primary standard design value is less than or equal to 53 parts per billion (ppb).

(b) An annual primary standard design value is valid when at least 75 percent of the hours in the year are reported.

(c) An annual primary standard design value based on data that do not meet the completeness criteria stated in section 3.1(b) may also be considered valid with the approval of, or at the initiative of, the Administrator, who may consider factors such as monitoring site closures/moves, monitoring diligence, the consistency and levels of the valid concentration measurements that are available, and nearby concentrations in determining whether to use such data.

(d) The procedures for calculating the annual primary standard design values are given in section 5.1 of this appendix.

3.2 The 1-hour Primary NO_2 NAAQS

(a) The 1-hour primary NO_2 NAAQS is met at a site when the valid 1-hour primary standard design value is less than or equal to 100 parts per billion (ppb).

(b) An NO_2 1-hour primary standard design value is valid if it encompasses three consecutive calendar years of complete data. A year meets data completeness requirements when all 4 quarters are complete. A quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported.

(c) In the case of one, two, or three years that do not meet the completeness requirements of section 3.2(b) of this appendix and thus would normally not be useable for the calculation of a valid 3-year 1-hour primary standard design value, the 3-year 1-hour primary standard design value shall nevertheless be considered valid if one of the following conditions is true.

(i) At least 75 percent of the days in each quarter of each of three consecutive years have at least one reported hourly value, and the design value calculated according to the procedures specified in section 5.2 is above the level of the primary 1-hour standard.

(ii)(A) A 1-hour primary standard design value that is below the level of the NAAQS can be validated if the substitution test in section 3.2(c)(ii)(B) results in a "test design value" that is below the level of the NAAQS. The test substitutes actual "high" reported daily maximum 1-hour values from the same site at about the same time of the year (specifically, in the same calendar quarter) for unknown values that were not successfully measured. Note that the test is merely diagnostic in nature, intended to confirm that there is a very high likelihood that the original design value (the one with less than 75 percent data capture of hours by day and of days by quarter) reflects the true under-NAAQS-level status for that 3-year period; the result of this data substitution test (the "test design value", as defined in section 3.2(c)(ii)(B)) is not considered the actual design value. For this test, substitution is permitted only if there are at least 200 days across the three matching quarters of the three years under consideration (which is about 75 percent of all possible daily values in those three quarters) for which 75 percent of the hours in the day, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, have reported concentrations. However, maximum 1-hour values from days with less than 75 percent of the hours reported shall also be considered in identifying the high value to be used for substitution.

(B) *The substitution test is as follows:* Data substitution will be performed in all quarter periods that have less than 75 percent data capture but at least 50 percent data capture, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator; if any quarter has less than 50 percent data capture then this substitution test cannot be used. Identify for each quarter (*e.g.,* January–March) the highest reported daily maximum 1-hour value for that quarter, excluding State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, looking across those three months of all three years under consideration. All daily maximum 1-hour values from all days in the quarter period shall be considered when identifying this highest value, including days with less than

75 percent data capture. If after substituting the highest non-excluded reported daily maximum 1-hour value for a quarter for as much of the missing daily data in the matching deficient quarter(s) as is needed to make them 100 percent complete, the procedure in section 5.2 yields a recalculated 3-year 1-hour standard "test design value" below the level of the standard, then the 1-hour primary standard design value is deemed to have passed the diagnostic test and is valid, and the level of the standard is deemed to have been met in that 3-year period. As noted in section 3.2(c)(i), in such a case, the 3-year design value based on the data actually reported, not the "test design value", shall be used as the valid design value.

(iii)(A) A 1-hour primary standard design value that is above the level of the NAAQS can be validated if the substitution test in section 3.2(c)(iii)(B) results in a "test design value" that is above the level of the NAAQS. The test substitutes actual "low" reported daily maximum 1-hour values from the same site at about the same time of the year (specifically, in the same three months of the calendar) for unknown values that were not successfully measured. Note that the test is merely diagnostic in nature, intended to confirm that there is a very high likelihood that the original design value (the one with less than 75 percent data capture of hours by day and of days by quarter) reflects the true above-NAAQS-level status for that 3-year period; the result of this data substitution test (the "test design value", as defined in section 3.2(c)(iii)(B)) is not considered the actual design value. For this test, substitution is permitted only if there are a minimum number of available daily data points from which to identify the low quarter-specific daily maximum 1-hour values, specifically if there are at least 200 days across the three matching quarters of the three years under consideration (which is about 75 percent of all possible daily values in those three quarters) for which 75 percent of the hours in the day have reported concentrations. Only days with at least 75 percent of the hours reported shall be considered in identifying the low value to be used for substitution.

(B) The substitution test is as follows: Data substitution will be performed in all quarter periods that have less than 75 percent data capture. Identify for each quarter (*e.g.,* January-March) the lowest reported daily maximum 1-hour value for that quarter, looking across those three months of all three years under consideration. All daily maximum 1-hour values from all days with at least 75 percent capture in the quarter period shall be considered when identifying this lowest value. If after substituting the lowest reported daily maximum 1-hour value for a quarter for as much of the missing daily data in the matching deficient quarter(s) as is needed to make them 75 percent complete, the procedure in section 5.2 yields a recalculated 3-year 1-hour standard "test design value" above the level of the standard, then the 1-hour primary standard design value is deemed to have passed the diagnostic test and is valid, and the level of the standard is deemed to have been exceeded in that 3-year period. As noted in section 3.2(c)(i), in such a case, the 3-year design value based on the data actually reported, not the "test design value", shall be used as the valid design value.

(d) A 1-hour primary standard design value based on data that do not meet the completeness criteria stated in 3.2(b) and also do not satisfy section 3.2(c), may also be considered valid with the approval of, or at the initiative of, the Administrator, who may consider factors such as monitoring site closures/moves, monitoring diligence, the consistency and levels of the valid concentration measurements that are available, and nearby concentrations in determining whether to use such data.

(e) The procedures for calculating the 1-hour primary standard design values are given in section 5.2 of this appendix.

4. Rounding Conventions

4.1 Rounding Conventions for the Annual Primary NO_2 NAAQS

(a) Hourly NO_2 measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

(b) The annual primary standard design value is calculated pursuant to section 5.1 and then rounded to the nearest whole number or 1 ppb (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

4.2 Rounding Conventions for the 1-hour Primary NO_2 NAAQS

(a) Hourly NO_2 measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

(b) Daily maximum 1-hour values are not rounded.

(c) The 1-hour primary standard design value is calculated pursuant to section 5.2 and then rounded to the nearest whole number or 1 ppb (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

5. Calculation Procedures for the Primary NO_2 NAAQS

5.1 Procedures for the Annual Primary NO_2 NAAQS

(a) When the data for a site and year meet the data completeness requirements in section 3.1(b) of this appendix, or if the Administrator exercises the discretionary authority in section 3.1(c), the annual mean is simply the arithmetic average of all of the reported 1-hour values.

(b) The annual primary standard design value for a site is the valid annual mean rounded according to the conventions in section 4.1.

5.2 Calculation Procedures for the 1-hour Primary NO_2 NAAQS

(a) *Procedure for identifying annual 98th percentile values.* When the data for a particular site and year meet the data completeness requirements in section 3.2(b), or if one of the conditions of section 3.2(c) is met, or if the Administrator exercises the discretionary authority in section 3.2(d), identification of annual 98th percentile value is accomplished as follows.

(i) The annual 98th percentile value for a year is the higher of the two values resulting from the following two procedures.

(1) Procedure 1.

(A) For the year, determine the number of days with at least 75 percent of the hourly values reported including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(B) For the year, from only the days with at least 75 percent of the hourly values reported, select from each day the maximum hourly value excluding State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(C) Sort all these daily maximum hourly values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], * * *, x[n]). In this case, x[1] is the largest number and x[n] is the smallest value.) The 98th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of Table 1, determine the appropriate range (*i.e.,* row) for the annual number of days with valid data for year y (cn_y) as determined from step (A). The corresponding "n" value in the right column identifies the rank of the annual 98th percentile value in the descending sorted list of daily site values for year y. Thus, $P_{0.98,\ y}$ = the nth largest value.

(2) Procedure 2.

(A) For the year, determine the number of days with at least one hourly value reported including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(B) For the year, from all the days with at least one hourly value reported, select from each day the maximum hourly value excluding State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator.

(C) Sort all these daily maximum values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], * * *, x[n]). In this case, x[1] is the largest number and x[n] is the smallest value.) The 98th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of Table 1, determine the appropriate range (*i.e.,* row) for the annual number of days with valid data for year y (cn_y) as determined from step (A). The corresponding "n" value in the right column identifies the rank of the annual 98th percentile value in the descending sorted list of daily site values for year y. Thus, $P_{0.98,\ y}$ = the nth largest value.

(b) The 1-hour primary standard design value for a site is mean of the three annual 98th percentile values, rounded according to the conventions in section 4.

TABLE 1

Annual number of days with valid data for year "y" (cn_y)	$P_{0.98,\ y}$ is the nth maximum value of the year, where n is the listed number
1–50	1
51–100	2
101–150	3
151–200	4
201–250.	5
251–300	6
301–350	7
351–366	8

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

■ 5. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

Subpart A—[Amended]

■ 6. Section 58.1, is amended by adding the definitions for "AADT" and "Near-road NO_2 Monitor" in alphabetical order to read as follows:

§ 58.1 Definitions

* * * * *

AADT means the annual average daily traffic.

* * *

Near-road NO_2 Monitor means any NO_2 monitor meeting the specifications in 4.3.2 of Appendix D and paragraphs 2, 4(d), 6.1, and 6.4 of Appendix E of this part.

* * * * *

Subpart B [Amended]

■ 7. Section 58.10, is amended by adding paragraphs (a)(5) and (b)(12) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a) * * *

(5) A plan for establishing NO_2 monitoring sites in accordance with the requirements of appendix D to this part shall be submitted to the Administrator by July 1, 2012. The plan shall provide for all required monitoring stations to be operational by January 1, 2013.

* * * * *

(b) * * *

(12) The identification of required NO_2 monitors as either near-road or area-wide sites in accordance with Appendix D, Section 4.3 of this part.

* * * * *

■ 8. Section 58.13 is amended by adding paragraph (c) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(c) The network of NO_2 monitors must be physically established no later than January 1, 2013, and at that time, must be operating under all of the requirements of this part, including the requirements of appendices A, C, D, and E to this part.

■ 9. Section 58.16 is amended by revising paragraph (a) to read as follows:

§ 58.16 Data submittal and archiving requirements.

* * * * *

(a) The State, or where appropriate, local agency, shall report to the Administrator, via AQS all ambient air quality data and associated quality assurance data for SO_2; CO; O_3; NO_2; NO; NO_Y; NO_X; Pb–TSP mass concentration; Pb–PM_{10} mass concentration; PM_{10} mass concentration; $PM_{2.5}$mass concentration; for filter-based $PM_{2.5}$FRM/FEM the field blank mass, sampler-generated average daily temperature, and sampler-generated average daily pressure; chemically speciated $PM_{2.5}$ mass concentration data; $PM_{10-2.5}$ mass concentration; chemically speciated $PM_{10-2.5}$ mass concentration data; meteorological data from NCore and PAMS sites; average daily temperature and average daily pressure for Pb sites if not already reported from sampler generated records; and metadata records and information specified by the AQS Data Coding Manual (*http://www.epa.gov/ttn/airs/airsaqs/manuals/manuals.htm*). The State, or where appropriate, local agency, may report site specific meteorological measurements generated by onsite equipment (meteorological instruments, or sampler generated) or measurements from the nearest airport reporting ambient pressure and temperature. Such air quality data and information must be submitted directly to the AQS via electronic transmission on the specified quarterly schedule described in paragraph (b) of this section.

* * * * *

■ 10. Appendix A to Part 58 is amended by adding paragraph 2.3.1.5 to read as follows:

Appendix A to Part 58—Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring

* * * * *

2.3.1.5 Measurement Uncertainty for NO_2. The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 15 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

* * * * *

■ 11. Appendix C to Part 58 is amended by adding paragraph 2.1.1 to read as follows:

Appendix C to Part 58—Ambient Air Quality Monitoring Methodology

* * * * *

2.1.1 Any NO_2 FRM or FEM used for making primary NAAQS decisions must be capable of providing hourly averaged concentration data.

* * * * *

■ 12. Appendix D to Part 58 is amended by revising paragraph 4.3 to read as follows:

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

4.3 Nitrogen Dioxide (NO_2) Design Criteria

4.3.1 General Requirements

(a) State and, where appropriate, local agencies must operate a minimum number of required NO_2 monitoring sites as described below.

4.3.2 Requirement for Near-road NO_2 Monitors

(a) Within the NO_2 network, there must be one microscale near-road NO_2 monitoring station in each CBSA with a population of 500,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road with high AADT counts as specified in paragraph 4.3.2(a)(1) of this appendix. An additional near-road NO_2 monitoring station is required for any CBSA with a population of 2,500,000 persons or more, or in any CBSA with a population of 500,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts to monitor a second location of expected maximum hourly concentrations. CBSA populations shall be based on the latest available census figures.

(1) The near-road NO_2 monitoring stations shall be selected by ranking all road segments within a CBSA by AADT and then identifying a location or locations adjacent to those highest ranked road segments, considering fleet mix, roadway design, congestion patterns, terrain, and meteorology, where maximum hourly NO_2 concentrations are expected to occur and siting criteria can be met in accordance with appendix E of this part. Where a State or local air monitoring agency identifies multiple acceptable candidate sites where maximum hourly NO_2 concentrations are expected to occur, the monitoring agency shall consider the potential for population exposure in the criteria utilized to select the final site location. Where one CBSA is required to have two near-road NO_2 monitoring stations, the sites shall be differentiated from each other by one or more of the following factors: fleet mix; congestion patterns; terrain; geographic area within the

CBSA; or different route, interstate, or freeway designation.

(b) Measurements at required near-road NO_2 monitor sites utilizing chemiluminescence FRMs must include at a minimum: NO, NO_2, and NO_X.

4.3.3 Requirement for Area-wide NO_2 Monitoring

(a) Within the NO_2 network, there must be one monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of expected highest NO_2 concentrations representing the neighborhood or larger spatial scales. PAMS sites collecting NO_2 data that are situated in an area of expected high NO_2 concentrations at the neighborhood or larger spatial scale may be used to satisfy this minimum monitoring requirement when the NO_2 monitor is operated year round. Emission inventories and meteorological analysis should be used to identify the appropriate locations within a CBSA for locating required area-wide NO_2 monitoring stations. CBSA populations shall be based on the latest available census figures.

4.3.4 Regional Administrator Required Monitoring

(a) The Regional Administrators, in collaboration with States, must require a minimum of forty additional NO_2 monitoring stations nationwide in any area, inside or outside of CBSAs, above the minimum monitoring requirements, with a primary focus on siting these monitors in locations to protect susceptible and vulnerable populations. The Regional Administrators, working with States, may also consider additional factors described in paragraph (b) below to require monitors beyond the minimum network requirement.

(b) The Regional Administrators may require monitors to be sited inside or outside of CBSAs in which:

(i) The required near-road monitors do not represent all locations of expected maximum hourly NO_2 concentrations in an area and NO_2 concentrations may be approaching or exceeding the NAAQS in that area;

(ii) Areas that are not required to have a monitor in accordance with the monitoring requirements and NO_2 concentrations may be approaching or exceeding the NAAQS; or

(iii) The minimum monitoring requirements for area-wide monitors are not sufficient to meet monitoring objectives.

(c) The Regional Administrator and the responsible State or local air monitoring agency should work together to design and/or maintain the most appropriate NO_2 network to address the data needs for an area, and include all monitors under this provision in the annual monitoring network plan.

4.3.5 NO_2 Monitoring Spatial Scales

(a) The most important spatial scale for near-road NO_2 monitoring stations to effectively characterize the maximum expected hourly NO_2 concentration due to mobile source emissions on major roadways is the microscale. The most important spatial scales for other monitoring stations characterizing maximum expected hourly NO_2 concentrations are the microscale and middle scale. The most important spatial scale for area-wide monitoring of high NO_2 concentrations is the neighborhood scale.

(1) *Microscale*—This scale represents areas in close proximity to major roadways or point and area sources. Emissions from roadways result in high ground level NO_2 concentrations at the microscale, where concentration gradients generally exhibit a marked decrease with increasing downwind distance from major roads. As noted in appendix E of this part, near-road NO_2 monitoring stations are required to be within 50 meters of target road segments in order to measure expected peak concentrations. Emissions from stationary point and area sources, and non-road sources may, under certain plume conditions, result in high ground level concentrations at the microscale. The microscale typically represents an area impacted by the plume with dimensions extending up to approximately 100 meters.

(2) *Middle scale*—This scale generally represents air quality levels in areas up to several city blocks in size with dimensions on the order of approximately 100 meters to 500 meters. The middle scale may include locations of expected maximum hourly concentrations due to proximity to major NO_2 point, area, and/or non-road sources.

(3) *Neighborhood scale*—The neighborhood scale represents air quality conditions throughout some relatively uniform land use areas with dimensions in the 0.5 to 4.0 kilometer range. Emissions from stationary point and area sources may, under certain plume conditions, result in high NO_2 concentrations at the neighborhood scale. Where a neighborhood site is located away from immediate NO_2 sources, the site may be useful in representing typical air quality values for a larger residential area, and therefore suitable for population exposure and trends analyses.

(4) *Urban scale*—Measurements in this scale would be used to estimate concentrations over large portions of an urban area with dimensions from 4 to 50 kilometers. Such measurements would be useful for assessing trends in area-wide air quality, and hence, the effectiveness of large scale air pollution control strategies. Urban scale sites may also support other monitoring objectives of the NO_2 monitoring network identified in paragraph 4.3.4 above.

4.3.6 NO_y Monitoring

(a) NO/NO_y measurements are included within the NCore multi-pollutant site requirements and the PAMS program. These NO/NO_y measurements will produce conservative estimates for NO_2 that can be used to ensure tracking continued compliance with the NO_2 NAAQS. NO/NO_y monitors are used at these sites because it is important to collect data on total reactive nitrogen species for understanding O_3 photochemistry.

* * * * *

■ 13. Appendix E to Part 58 is amended as follows:

■ a. By revising paragraphs 2, and 6.1.

■ b. By adding paragraphs 4(d) and 6.4.

■ c. By revising paragraphs 9(c), 11 and Table E–4.

Appendix E to Part 58—Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring

* * * * *

2. Horizontal and Vertical Placement

The probe or at least 80 percent of the monitoring path must be located between 2 and 15 meters above ground level for all ozone and sulfur dioxide monitoring sites, and for neighborhood or larger spatial scale Pb, PM_{10}, $PM_{10-2.5}$, $PM_{2.5}$, NO_2 and carbon monoxide sites. Middle scale $PM_{10-2.5}$ sites are required to have sampler inlets between 2 and 7 meters above ground level. Microscale Pb, PM_{10}, $PM_{10-2.5}$ and $PM_{2.5}$ sites are required to have sampler inlets between 2 and 7 meters above ground level. Microscale near-road NO_2 monitoring sites are required to have sampler inlets between 2 and 7 meters above ground level. The inlet probes for microscale carbon monoxide monitors that are being used to measure concentrations near roadways must be 3±½ meters above ground level. The probe or at least 90 percent of the monitoring path must be at least 1 meter vertically or horizontally away from any supporting structure, walls, parapets, penthouses, *etc.,* and away from dusty or dirty areas. If the probe or a significant portion of the monitoring path is located near the side of a building or wall, then it should be located on the windward side of the building relative to the prevailing wind direction during the season of highest concentration potential for the pollutant being measured.

* * * * *

4. * * *

(d) For near-road NO_2 monitoring stations, the monitor probe shall have an unobstructed air flow, where no obstacles exist at or above the height of the monitor probe, between the monitor probe and the outside nearest edge of the traffic lanes of the target road segment.

* * * * *

6. * * *

6.1 Spacing for Ozone Probes and Monitoring Paths

In siting an O_3 analyzer, it is important to minimize destructive interferences form sources of NO, since NO readily reacts with O_3. Table E–1 of this appendix provides the required minimum separation distances between a roadway and a probe or, where applicable, at least 90 percent of a monitoring path for various ranges of daily roadway traffic. A sampling site having a point analyzer probe located closer to a roadway than allowed by the Table E–1 requirements should be classified as microscale or middle scale, rather than neighborhood or urban scale, since the measurements from such a site would more closely represent the middle scale. If an open path analyzer is used at a site, the monitoring path(s) must not cross over a roadway with an average daily traffic count of 10,000 vehicles per day or more. For those situations where a monitoring path crosses a roadway with fewer than 10,000 vehicles per day, monitoring agencies must consider the entire segment of the monitoring

path in the area of potential atmospheric interference from automobile emissions. Therefore, this calculation must include the length of the monitoring path over the roadway plus any segments of the monitoring path that lie in the area between the roadway and minimum separation distance, as determined from the Table E–1 of this appendix. The sum of these distances must not be greater than 10 percent of the total monitoring path length.

* * * * *

6.4 Spacing for Nitrogen Dioxide (NO_2) Probes and Monitoring Paths

(a) In siting near-road NO_2 monitors as required in paragraph 4.3.2 of appendix D of this part, the monitor probe shall be as near as practicable to the outside nearest edge of the traffic lanes of the target road segment; but shall not be located at a distance greater than 50 meters, in the horizontal, from the outside nearest edge of the traffic lanes of the target road segment.

(b) In siting NO_2 monitors for neighborhood and larger scale monitoring, it is important to minimize near-road influences. Table E–1 of this appendix provides the required minimum separation distances between a roadway and a probe or, where applicable, at least 90 percent of a monitoring path for various ranges of daily roadway traffic. A sampling site having a point analyzer probe located closer to a roadway than allowed by the Table E–1 requirements should be classified as microscale or middle scale rather than neighborhood or urban scale. If an open path analyzer is used at a site, the monitoring path(s) must not cross over a roadway with an average daily traffic count of 10,000 vehicles per day or more. For those situations where a monitoring path crosses a roadway with fewer than 10,000 vehicles per day, monitoring agencies must consider the entire segment of the monitoring path in the area of potential atmospheric interference form automobile emissions. Therefore, this calculation must include the length of the monitoring path over the roadway plus any segments of the monitoring path that lie in the area between the roadway and minimum separation distance, as determined form the Table E–1 of this appendix. The sum of these distances must not be greater than 10 percent of the total monitoring path length.

* * * * *

9. * * *

(c) No matter how nonreactive the sampling probe material is initially, after a period of use reactive particulate matter is deposited on the probe walls. Therefore, the time it takes the gas to transfer from the probe inlet to the sampling device is also critical. Ozone in the presence of nitrogen oxide (NO) will show significant losses even in the most inert probe material when the residence time exceeds 20 seconds.[26] Other studies [27 28] indicate that a 10 second or less residence time is easily achievable. Therefore, sampling probes for reactive gas monitors at NCore and at NO_2 sites must have a sample residence time less than 20 seconds.

* * * * *

11. Summary

Table E–4 of this appendix presents a summary of the general requirements for probe and monitoring path siting criteria with respect to distances and heights. It is apparent from Table E–4 that different elevation distances above the ground are shown for the various pollutants. The discussion in this appendix for each of the pollutants describes reasons for elevating the monitor, probe, or monitoring path. The differences in the specified range of heights are based on the vertical concentration gradients. For CO and near-road NO_2 monitors, the gradients in the vertical direction are very large for the microscale, so a small range of heights are used. The upper limit of 15 meters is specified for the consistency between pollutants and to allow the use of a single manifold or monitoring path for monitoring more than one pollutant.

TABLE E–4 OF APPENDIX E TO PART 58. SUMMARY OF PROBE AND MONITORING PATH SITING CRITERIA

Pollutant	Scale (maximum monitoring path length, meters)	Height from ground to probe, inlet or 80% of monitoring path [1]	Horizontal and vertical distance from supporting structures[2] to probe, inlet or 90% of monitoring path[1] (meters)	Distance from trees to probe, inlet or 90% of monitoring path[1] (meters)	Distance from roadways to probe, inlet or monitoring path[1] (meters)
SO_2 [3,4,5,6]	Middle (300 m) Neighborhood Urban, and Regional (1 km).	2–15	>1	>10	N/A
CO [4,5,7]	Micro, middle (300 m), Neighborhood (1 km).	3½: 2–15	>1	>10	2–10; *see* Table E–2 of this appendix for middle and neighborhood scales.
O_3 [3,4,5]	Middle (300 m) Neighborhood, Urban, and Regional (1 km).	2–15	>1	>10	*See* Table E–1 of this appendix for all scales.
NO_2 [3,4,5]	Micro (Near-road [50–300]).	2–7 (micro);	>1	>10	≤50 meters for near-road microscale.
	Middle (300m)	2–15 (all other scales).			
	Neighborhood, Urban, and Regional (1 km).				*See* Table E–1 of this appendix for all other scales
Ozone precursors (for PAMS) [3 4 5].	Neighborhood and Urban (1 km).	2–15	>1	>10	*See* Table E–4 of this appendix for all scales.
PM, Pb [3,4,5,6,8]	Micro: Middle, Neighborhood, Urban and Regional.	2–7 (micro); 2–7 (middle $PM_{10-2.5}$); 2–15 (all other scales).	>2 (all scales, horizontal distance only).	>10 (all scales)	2–10 (micro); *see* Figure E–1 of this appendix for all other scales.

N/A—Not applicable.

[1] Monitoring path for open path analyzers is applicable only to middle or neighborhood scale CO monitoring, middle, neighborhood, urban, and regional scale NO_2 monitoring, and all applicable scales for monitoring SO_2,O_3, and O_3 precursors.

[2] When probe is located on a rooftop, this separation distance is in reference to walls, parapets, or penthouses located on roof.

[3] Should be >20 meters from the dripline of tree(s) and must be 10 meters from the dripline when the tree(s) act as an obstruction.

[4] Distance from sampler, probe, or 90% of monitoring path to obstacle, such as a building, must be at least twice the height the obstacle protrudes above the sampler, probe, or monitoring path. Sites not meeting this criterion may be classified as middle scale (*see* text).

[5] Must have unrestricted airflow 270 degrees around the probe or sampler; 180 degrees if the probe is on the side of a building or a wall.

[6] The probe, sampler, or monitoring path should be away from minor sources, such as furnace or incineration flues. The separation distance is dependent on the height of the minor source's emission point (such as a flue), the type of fuel or waste burned, and the quality of the fuel (sulfur, ash, or lead content). This criterion is designed to avoid undue influences from minor sources.

[7] For microscale CO monitoring sites, the probe must be >10 meters from a street intersection and preferably at a midblock location.

[8] Collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference.

* * * * *

14. Appendix G to Part 58 is amended as by revising paragraph 9 and Table 2 to read as follows:

Appendix G to Part 58—Uniform Air Quality Index (AQI) and Daily Reporting

* * * * *

9. How Does the AQI Relate to Air Pollution Levels?

For each pollutant, the AQI transforms ambient concentrations to a scale from 0 to 500. The AQI is keyed as appropriate to the national ambient air quality standards (NAAQS) for each pollutant. In most cases, the index value of 100 is associated with the numerical level of the short-term (*i.e.,* averaging time of 24-hours or less) standard for each pollutant. The index value of 50 is associated with one of the following: the numerical level of the annual standard for a pollutant, if there is one; one-half the level of the short-term standard for the pollutant; or the level at which it is appropriate to begin to provide guidance on cautionary language. Higher categories of the index are based on increasingly serious health effects that affect increasing proportions of the population. An index value is calculated each day for each pollutant (as described in section 12 of this appendix), unless that pollutant is specifically excluded (*see* section 8 of this appendix). The pollutant with the highest index value for the day is the "critical" pollutant, and must be included in the daily AQI report. As a result, the AQI for any given day is equal to the index value of the critical pollutant for that day. For the purposes of reporting the AQI, the indexes for PM_{10} and $PM_{2.5}$ are to be considered separately.

* * * * *

TABLE 2—BREAKPOINTS FOR THE AQI

These breakpoints							Equal these AQIs	
O_3 (ppm) 8-hour	O_3 (ppm) 1-hour[1]	$PM_{2.5}$ (μg/m³)	PM_{10} (μg/m³)	CO (ppm)	SO_2 (ppm)	NO_2 (ppm) 1-hour	AQI	Category
0.000–0.059	.....	0.0–15.4	0–54	0.0–4.4	0.000–0.034	0–0.053	0–50	Good.
0.060–0.075	.....	15.5–40.4	55–154	4.5–9.4	0.035–0.144	0.054–0.100	51–100	Moderate.
0.076–0.095	0.125–0.164	40.5–65.4	155–254	9.5–12.4	0.145–0.224	0.101–0.360	101–150	Unhealthy for Sensitive Groups.
0.096–0.115	0.165–0.204	[3] 65.5–150.4	255–354	12.5–15.4	0.225–0.304	0.361–0.64	151–200	Unhealthy.
0.116–0.374	0.205–0.404	[3] 150.5–250.4	355–424	15.5–30.4	0.305–0.604	0.65–1.24	201–300	Very Unhealthy.
([2])	0.405–0.504	[3] 250.5–350.4	425–504	30.5–40.4	0.605–0.804	1.25–1.64	301–400	Hazardous.
([2])	0.505–0.604	[3] 350.5–500.4	505–604	40.5–50.4	0.805–1.004	1.65–2.04	401–500	Hazardous.

[1] Areas are generally required to report the AQI based on 8-hour ozone values. However, there are a small number of areas where an AQI based on 1-hour ozone values would be more precautionary. In these cases, in addition to calculating the 8-hour ozone index value, the 1-hour ozone index value may be calculated, and the maximum of the two values reported.

[2] 8-hours O_3 values do not define higher AQI values (≥301). AQI values of 301 or greater are calculated with 1-hour O_3 concentrations.

[3] If a different SHL for $PM_{2.5}$ is promulgated, these numbers will change accordingly.

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H.R. 1817/P.L. 111–128

To designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the "John S. Wilder Post Office Building". (Jan. 29, 2010; 123 Stat. 3487)

H.R. 2877/P.L. 111–129

To designate the facility of the United States Postal Service located at 76 Brookside Avenue in Chester, New York, as the "1st Lieutenant Louis Allen Post Office". (Jan. 29, 2010; 123 Stat. 3488)

H.R. 3072/P.L. 111–130

To designate the facility of the United States Postal Service located at 9810 Halls Ferry Road in St. Louis, Missouri, as the "Coach Jodie Bailey Post Office Building". (Jan. 29, 2010; 123 Stat. 3489)

H.R. 3319/P.L. 111–131

To designate the facility of the United States Postal Service located at 440 South Gulling Street in Portola, California, as the "Army Specialist Jeremiah Paul McCleery Post Office Building". (Jan. 29, 2010; 123 Stat. 3490)

H.R. 3539/P.L. 111–132

To designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the "Patricia D. McGinty-Juhl Post Office Building". (Jan. 29, 2010; 123 Stat. 3491)

H.R. 3667/P.L. 111–133

To designate the facility of the United States Postal Service located at 16555 Springs Street in White Springs, Florida, as the "Clyde L. Hillhouse Post Office Building". (Jan. 29, 2010; 123 Stat. 3492)

H.R. 3767/P.L. 111–134

To designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the "W. Hazen Hillyard Post Office Building". (Jan. 29, 2010; 123 Stat. 3493)

H.R. 3788/P.L. 111–135

To designate the facility of the United States Postal Service located at 3900 Darrow Road in Stow, Ohio, as the "Corporal Joseph A. Tomci Post Office Building". (Jan. 29, 2010; 123 Stat. 3494)

H.R. 1377/P.L. 111–137

To amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, and for other purposes. (Feb. 1, 2010; 123 Stat. 3495)

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

H.R. 4508/P.L. 111–136

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 29, 2010; 124 Stat. 6; 1 page)

S. 692/P.L. 111–138

To provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances. (Feb. 1, 2010; 124 Stat. 7; 1 page)

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