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Presidential Documents

Title 3—

The President

Executive Order 13539 of April 21, 2010

President's Council of Advisors on Science and Technology

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish an advisory council on science, technology, and innovation, it is hereby ordered as follows:

Section 1. *Establishment.* The President's Council of Advisors on Science and Technology (PCAST) is hereby established. The PCAST shall be composed of not more than 21 members, one of whom shall be the Assistant to the President for Science and Technology (the "Science Advisor"), and 20 of whom shall include distinguished individuals and representatives from sectors outside of the Federal Government appointed by the President. These nonfederal members shall have diverse perspectives and expertise in science, technology, and innovation. The Science Advisor shall serve as a Co-Chair of the PCAST. The President shall also designate at least one, but not more than two, of the nonfederal members to serve as a Co-Chair of the PCAST with the Science Advisor.

Sec. 2. *Functions.* (a) The PCAST shall advise the President, directly at its meetings with the President and also through the Science Advisor, on matters involving science, technology, and innovation policy. This advice shall include, but not be limited to, policy that affects science, technology, and innovation, as well as scientific and technical information that is needed to inform public policy relating to the economy, energy, environment, public health, national and homeland security, and other topics. The PCAST shall meet regularly and shall:

(i) respond to requests from the President or the Science Advisor for information, analysis, evaluation, or advice;

(ii) solicit information and ideas from the broad range of stakeholders, including but not limited to the research community, the private sector, universities, national laboratories, State and local governments, foundations, and nonprofit organizations;

(iii) serve as the advisory committee identified in subsections 101(b) and 103(b) of the High Performance Computing Act of 1991 (Public Law 102–194), as amended (15 U.S.C. 5511(b) and 5513(b)). In performing the functions of such advisory committee, the PCAST shall be known as the President's Innovation and Technology Advisory Committee; and

(iv) serve as the advisory panel identified in section 4 of the 21st Century Nanotechnology Research and Development Act (15 U.S.C. 7503) (21st Century Act). In performing the functions of such advisory committee, the PCAST shall be known as the National Nanotechnology Advisory Panel. Nothing in this order shall be construed to require the National Nanotechnology Advisory Panel to comply with any requirement from which it is exempted by section 4(f) of the 21st Century Act.

(b) The PCAST shall provide advice from the nonfederal sector to the National Science and Technology Council (NSTC) in response to requests from the NSTC.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the PCAST with information concerning scientific and technological matters when requested by the PCAST Co-Chairs and as required for the purpose of carrying out the PCAST's functions.

(b) In consultation with the Science Advisor, the PCAST is authorized to create standing subcommittees and ad hoc groups, including, but not limited to, technical advisory groups to assist the PCAST and provide preliminary information directly to the PCAST.

(c) So that the PCAST may provide advice and analysis regarding classified matters, the Science Advisor may request that members of the PCAST, its standing subcommittees, or ad hoc groups who do not hold a current clearance for access to classified information, receive security clearance and access determinations pursuant to Executive Order 12968 of August 2, 1995, as amended, or any successor order.

(d) The Office of Science and Technology Policy (OSTP) shall provide such funding and administrative and technical support as the PCAST may require.

(e) Members of the PCAST shall serve without any compensation for their work on the PCAST, but may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

Sec. 4. *Termination*. The PCAST shall terminate 2 years from the date of this order unless extended by the President.

Sec. 5. *General Provisions*. (a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (FACA) may apply to the PCAST, any functions of the President under the FACA, except that of reporting to the Congress, shall be performed by the Director of the OSTP in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 6. *Revocation*. Executive Order 13226 of September 30, 2001, as amended, is hereby revoked.

THE WHITE HOUSE,
April 21, 2010.

[FR Doc. 2010–9796
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Presidential Documents

Proclamation 8503 of April 21, 2010

Earth Day, 2010

By the President of the United States of America

A Proclamation

In the fall of 1969, Wisconsin Senator Gaylord Nelson announced plans for a national "environmental teach-in"—one day, each year, of action and advocacy for the environment. His words rallied our Nation, and the first Earth Day, as it became known, saw millions come together to meet one of the greatest challenges of our times: caring for our planet. What Senator Nelson and the other organizers believed then, and what we still believe today, is that our environment is a blessing we share. Our future is inextricably bound to our planet's future, and we must be good stewards of our home as well as one another.

On the 40th anniversary of Earth Day, we come together to reaffirm those beliefs. We have come far in these past four decades. One year before the first Earth Day, our Nation watched in horror as the polluted and debris-choked Cuyahoga River in Cleveland, Ohio, caught fire. In response, a generation of Americans stepped forward to demand progress. What Americans achieved in the decades that followed has made our children healthier, our water and air cleaner, and our planet more livable.

We passed the Clean Air and Clean Water Acts, established the Environmental Protection Agency, and safeguarded treasured American landscapes. Americans across our country have witnessed the impact of these measures, including the people of Cleveland, where the Cuyahoga River is cleaner than it has been in a century.

We continue to build on this progress today. My Administration has invested in clean energy and clean water infrastructure across the country. We are also committed to passing comprehensive energy and climate legislation that will create jobs, reduce our dependence on foreign oil, and cut carbon pollution.

We have more work to do, however, and change will not come from Washington alone. The achievements of the past were possible because ordinary Americans demanded them, and meeting today's environmental challenges will require a new generation to carry on Earth Day's cause. From weatherizing our homes to planting trees in our communities, there are countless ways for every American, young and old, to get involved. I encourage all Americans to visit WhiteHouse.gov/EarthDay for information and resources to get started.

The 40th anniversary of Earth Day is an opportunity for us to reflect on the legacy we have inherited from previous generations, and the legacy that we will bestow upon generations to come. Their future depends on the action we take now, and we must not fail them. Forty years from today, when our children and grandchildren look back on what we did at this moment, let them say that we, too, met the challenges of our time and passed on a cleaner, healthier planet.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22, 2010, as Earth Day. I encourage all Americans to participate in programs and

activities that will protect our environment and contribute to a healthy, sustainable future.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–9818
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, 30, 40, 55, 70, and 73

RIN 3150–AI80

[NRC–2010–0083]

NRC Region II Address and Main Telephone Number Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to update the street address for its Region II office and to update the main telephone number. The Region II office move and telephone number change will take effect on April 12, 2010. Also, the relevant regulations that govern communications are amended to reflect that Virginia is now an Agreement State. This document is necessary to inform the public of these changes to the NRC's regulations.

DATES: This rule is effective May 27, 2010.

FOR FURTHER INFORMATION CONTACT: Judy G. Coleman, Deputy Director, Division of Resource Management and Administration, U.S. Nuclear Regulatory Commission, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, GA 30303–1257, telephone 404–562–4824 or 404–997–4824, E-mail *Judy.Coleman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The NRC is amending its regulations at 10 CFR Parts 1, 20, 30, 40, 55, 70, and 73 to update the NRC Region II office street address and office main telephone number. The physical location of the NRC Region II office has changed.

Because these amendments constitute minor administrative corrections to the regulations, the Commission finds that the notice and comment provisions of the Administrative Procedure Act are unnecessary and is exercising its authority under 5 U.S.C. 553(b)(B) to publish these amendments as a final rule. The amendments are effective 30 days after publication in the **Federal Register**. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

Summary of Changes

Change in Street Address for Region II, USNRC

The street address of the NRC Region II office has been changed. The new address is incorporated into the following sections of the NRC's regulations: § 1.5(b)(2), Appendix D to 10 CFR Part 20, §§ 30.6(b)(2)(ii), 40.5(b)(2)(ii), 55.5(b)(2)(ii), 70.5(b)(2)(ii), and Appendix A to 10 CFR Part 73.

Change in Region II Main Telephone Number

The telephone number for requesting NRC information has been changed. The new telephone number is incorporated into Appendix D to 10 CFR Part 20 and Appendix to Part 73 of the NRC's regulations.

Virginia Is Now an Agreement State

In §§ 30.6(b)(2)(ii), 40.5(b)(2)(ii), and 70.5(b)(2)(ii), Virginia no longer appears because it is now an Agreement State.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are administrative in nature and do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

Congressional Review Act (CRA)

Under the CRA of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 1

Organization and functions (government agencies).

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material

control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 1, 20, 30, 40, 55, 70, and 73.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Sec. 23, 16181, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 759, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191 Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat.1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.5, revise paragraph (b)(2) to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

* * * * *

(b) * * *

(2) Region II, USNRC, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, GA 30303–1257.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 3. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186,68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 4. In Appendix D to Part 20, in the second column of the table, revise the address for Region II as set forth below; and in the third column of the table, revise the first telephone number for Region II to read "(404) 997–4000".

Appendix D to Part 20—United States Nuclear Regulatory Commission Regional Offices

* * * * *

USNRC, Region II, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, GA 30303–1257.

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 5. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 6. Section 30.6(b)(2)(ii) is revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) * * *

(2) * * *

(ii) *Region II.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region II non-Agreement States and territories: West Virginia, Puerto Rico, and the Virgin Islands. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, GA 30303–1257. Where e-mail is appropriate, it should be addressed to *RidsRgn2MailCenter@nrc.gov.*

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 7. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 8. Section 40.5(b)(2)(ii) is revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) * * *

(2) * * *

(ii) *Region II.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region II non-Agreement States and territories: West Virginia, Puerto Rico, and the Virgin Islands. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region II, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, GA 30303–1257. Where e-mail is appropriate, it should be addressed to *RidsRgn2MailCenter@nrc.gov.*

* * * * *

PART 55—OPERATORS' LICENSES

■ 9. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226).

Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

■ 10. In § 55.5, revise paragraph (b)(2)(ii) to read as follows:

§ 55.5 Communications.

* * * * *

(b) * * *

(2) * * *

(ii) If the nuclear power reactor is located in Region II, submissions must be made to the Regional Administrator of Region II. Submissions by mail or hand delivery must be addressed to the Regional Administrator at U.S. Nuclear Regulatory Commission, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, Georgia 30303–1257. Where e-mail is appropriate, it should be addressed to *RidsRgn2MailCenter@nrc.gov.*

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 11. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 12. Section 70.5(b)(2)(ii) is revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) * * *

(2) * * *

(ii) *Region II.* The regional licensing program involves all Federal facilities in the region and non-Federal licensees in the following Region II non-Agreement States and territories: West Virginia, Puerto Rico, and the Virgin Islands. All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region II, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, GA 30303–1257. Where e-mail is appropriate, it should be addressed to *RidsRgn2MailCenter@nrc.gov.*

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 14. In Appendix A to Part 73, first table, second column, and second table, "Classified Mailing Address" second column, revise the address for Region II as set forth below; and in the third column of the first table, revise the first telephone number for Region II to read "(404) 997–4000".

Appendix A to Part 73—U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses

* * * * *

USNRC, Region II, 245 Peachtree Center Avenue, NE., Suite 1200, Atlanta, GA 30303–1245.

* * * * *

Classified Mailing Address

* * * * *

USNRC, P.O. Box 56267, Atlanta, GA 30343.

* * * * *

Dated at Rockville, Maryland, this 20th day of April 2010.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Announcements and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2010–9584 Filed 4–26–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EE–2006–BT–STD–0129]

RIN 1904–AA90

Energy Conservation Program: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters

Correction

In rule document 2010–7611 beginning on page 20112 in the issue of Friday, April 16, 2010 make the following correction:

On page 20113, in the third column, in the first full paragraph, in the ninth line, "April 15, 2013" should read "April 16, 2013".

[FR Doc. C1–2010–7611 Filed 4–26–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30719 ; Amdt. No. 3369]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 27, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 2010.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 2, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

■ By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
6–May–10	MI	DETROIT	WILLOW RUN	0/0421	3/23/10	ILS RWY 23L, AMDT 7B
6–May–10	MI	ROGERS CITY	PRESQUE ISLE COUNTY	0/0426	3/23/10	NDB RWY 27, AMDT 3
6–May–10	MN	APPLETON	APPLETON MUNI	0/0494	3/23/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
6–May–10	MN	BIGFORK	BIGFORK MUNICIPAL	0/0496	3/23/10	TAKEOFF MINIMUMS AND OBSTACLE DP, ORIG
6–May–10	MI	EATON RAPIDS	SKYWAY ESTATES	0/0497	3/23/10	VOR OR GPS A, AMDT 1

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
6–May–10	MI	ALPENA	ALPENA COUNTY RGNL	0/0498	3/23/10	RNAV (GPS) RWY 1, ORIG
6–May–10	MI	WEST BRANCH	WEST BRANCH COMMUNITY.	0/0501	3/23/10	VOR RWY 27, ORIG–D
6–May–10	MN	MINNEAPOLIS	AIRLAKE	0/0517	3/23/10	ILS OR LOC RWY 30, ORIG–D
6–May–10	MI	ALPENA	ALPENA COUNTY RGNL	0/0520	3/23/10	VOR RWY 1, AMDT 14B
6–May–10	FL	BOCA RATON	BOCA RATON	0/0879	3/23/10	VOR/DME A, AMDT 1
6–May–10	GA	CORDELE	CRISP COUNTY—CORDELE.	0/1012	3/17/10	LOC RWY 10, ORIG–B
6–May–10	MI	GAYLORD	GAYLORD RGNL	0/1035	3/17/10	ILS OR LOC RWY 9, ORIG–A
6–May–10	MI	TROY	OAKLAND/TROY	0/1120	3/23/10	VOR OR GPS A, AMDT 3
6–May–10	AZ	GOODYEAR	PHOENIX GOODYEAR MUNI.	0/7677	3/23/10	RNAV (GPS) RWY 3, ORIG
6–May–10	NV	RENO	RENO/TAHOE INTL	0/7823	3/23/10	ILS OR LOC/DME RWY 34L, ORIG–A
6–May–10	NV	RENO	RENO/TAHOE INTL	0/7824	3/23/10	RNAV (GPS) Y RWY 16L, AMDT 1
6–May–10	NV	RENO	RENO/TAHOE INTL	0/7825	3/23/10	RNAV (GPS) Y RWY 16R, AMDT 1
6–May–10	DE	LAUREL	LAUREL	0/9666	3/23/10	GPS A, ORIG
6–May–10	MD	BALTIMORE	BALTIMORE-WASHINGTON INTL THURGOOD MARSHALL.	0/9668	3/23/10	VOR RWY 10, AMDT 17
6–May–10	GA	BLAKELY	EARLY COUNTY	0/9324	3/8/10	THIS NOTAM PUBLISHED IN TL 10–09 IS HEREBY RESCINDED IN ITS ENTIRETY RNAV (GPS) RWY 23, AMDT 1
3–Jun–10	VT	BARRE/MONTPELIER.	EDWARD F. KNAPP STATE	0/1764	3/24/10	ILS OR LOC RWY 17, AMDT 6

[FR Doc. 2010–8834 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30718; Amdt. No. 3368]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 27, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 2010.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPs. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4,

8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

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

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 6 MAY 2010

Smithfield, NC, Johnston County, NDB OR GPS RWY 21, Amdt 6, CANCELLED
Montgomery, NY, Orange County, ILS OR LOC RWY 3, Amdt 3A
Montgomery, NY, Orange County, RNAV (GPS) RWY 26, Amdt 1A
Mount Pleasant, SC, Mt. Pleasant Rgnl-Faison Field, Takeoff Minimums and Obstacle DP, Amdt 1
Mount Pleasant, SC, Mt. Pleasant Rgnl-Faison Field, VOR/DME–A, Amdt 1
Mount Pleasant, SC, Mt. Pleasant Rgnl-Faison Field, VOR/DME RNAV OR GPS RWY 17, Orig, CANCELLED
Fayetteville, TN, Fayetteville Muni, RNAV (GPS) RWY 20, Amdt 1A
Paris, TN, Henry County, ILS OR LOC/NDB RWY 2, Amdt 1
Paris, TN, Henry County, NDB RWY 2, Amdt 3
Paris, TN, Henry County, RNAV (GPS) RWY 2, Orig
Paris, TN, Henry County, RNAV (GPS) RWY 20, Amdt 1

Effective 3 JUN 2010

Anniston, AL, Anniston Metropolitan, RNAV (GPS) RWY 5, Amdt 1
Anniston, AL, Anniston Metropolitan, RNAV (GPS) Y RWY 23, Amdt 1
Anniston, AL, Anniston Metropolitan, RNAV (GPS) Z RWY 23, Orig
Hamilton, AL, Marion County-Rankin Fite, VOR RWY 18, Amdt 5
Ash Flat, AR, Sharp County Rgnl, NDB RWY 4, Amdt 1D, CANCELLED
Batesville, AR, Batesville Rgnl, RNAV (GPS) RWY 7, Amdt 1
Fort Smith, AR, Fort Smith Rgnl, RNAV (GPS) RWY 1, Amdt 2
Fort Smith, AR, Fort Smith Rgnl, RNAV (GPS) RWY 7, Amdt 1
Fort Smith, AR, Fort Smith Rgnl, RNAV (GPS) RWY 25, Amdt 1
Ozark, AR, Ozark-Franklin County, RNAV (GPS) RWY 4, Orig
Ozark, AR, Ozark-Franklin County, Takeoff Minimums and Obstacle DP, Amdt 2
Napa, CA, Napa County, NAPAA ONE Graphic Obstacle DP
Napa, CA, Napa County, Takeoff Minimums and Obstacle DP, Amdt 4
San Diego, CA, Brown Field Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Jacksonville, FL, Cecil Field, GPS RWY 9R, Orig, CANCELLED
Jacksonville, FL, Cecil Field, GPS RWY 18L, Orig-A, CANCELLED
Jacksonville, FL, Cecil Field, GPS RWY 27L, Orig, CANCELLED
Jacksonville, FL, Cecil Field, GPS RWY 36R, Orig, CANCELLED
Jacksonville, FL, Cecil Field, RNAV (GPS) RWY 18L, Orig
Jacksonville, FL, Cecil Field, RNAV (GPS) RWY 36R, Orig
Panama City, FL, Northwest Florida-Panama City Intl, ILS OR LOC/DME RWY 16, Orig-A
Panama City, FL, Northwest Florida-Panama City Intl, RNAV (GPS) RWY 16, Orig-A
Panama City, FL, Northwest Florida-Panama City Intl, RNAV (GPS) RWY 34, Orig-A
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) Y RWY 14, Amdt 2A
Ames, IA, Ames Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 8, Orig
Cedar Rapids, IA, The Eastern Iowa, RNAV (GPS) RWY 26, Orig
Cedar Rapids, IA, The Eastern Iowa, Takeoff Minimums and Obstacle DP, Amdt 3
Cedar Rapids, IA, The Eastern Iowa, VOR/DME RWY 8, Orig
Cedar Rapids, IA, The Eastern Iowa, VOR RWY 26, Orig
Effingham, IL, Effingham County Memorial, Takeoff Minimums and Obstacle DP, Amdt 5
Shelbyville, IL, Shelby County, Takeoff Minimums and Obstacle DP, Orig

Crawfordsville, IN, Crawfordsville Muni, Takeoff Minimums and Obstacle DP, Orig
Chanute, KS, Chanute Martin Johnson, RNAV (GPS) RWY 36, Orig
Chanute, KS, Chanute Martin Johnson, Takeoff Minimums and Obstacle DP, Orig
Chanute, KS, Chanute Martin Johnson, VOR–A, Amdt 10
Chanute, KS, Chanute Martin Johnson, VOR/DME RNAV OR (GPS) RWY 36, Amdt 3C, CANCELLED
Coffeyville, KS, Coffeyville Muni, NDB RWY 35, Amdt 1
Baton Rouge, LA, Baton Rouge Metro, Ryan Field, RNAV (GPS) RWY 13, Amdt 1
Baton Rouge, LA, Baton Rouge Metro, Ryan Field, Takeoff Minimums and Obstacle DP, Amdt 1
Lake Charles, LA, Chennault Intl, RNAV (GPS) RWY 33, Amdt 1
Lake Charles, LA, Chennault Intl, Takeoff Minimums and Obstacle DP, Orig
Cassville, MO, Cassville Muni, RNAV (GPS) RWY 9, Orig
Cassville, MO, Cassville Muni, Takeoff Minimums and Obstacle DP, Orig
Cassville, MO, Cassville Muni, VOR RWY 9, Amdt 2
Kennett, MO, Kennett Memorial, NDB RWY 2, Orig, CANCELLED
Kennett, MO, Kennett Memorial, NDB RWY 20, Orig, CANCELLED
Lebanon, MO, Floyd W Jones Lebanon, Takeoff Minimums and Obstacle DP, Orig
Madison, MS, Bruce Campbell Field, VOR–A, Amdt 10
Madison, MS, Bruce Campbell Field, VOR/DME–B, Amdt 5
Endicott, NY, Tri-Cities, GPS RWY 21, Orig-A, CANCELLED
Endicott, NY, Tri-Cities, RNAV (GPS) RWY 3, Orig
Endicott, NY, Tri-Cities, RNAV (GPS) RWY 21, Orig
Endicott, NY, Tri-Cities, VOR–A, Amdt 5
Rochester, NY, Greater Rochester Intl, ILS OR LOC RWY 22, Amdt 7
Rochester, NY, Greater Rochester Intl, RNAV (GPS) RWY 22, Amdt 1
Buffalo, OK, Buffalo Muni, NDB–A, Amdt 3
North Bend, OR, Southwest Oregon Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
Dubois, PA, Dubois Rgnl, ILS OR LOC RWY 25, Amdt 9
Dubois, PA, Dubois Rgnl, RNAV (GPS) RWY 7, Amdt 1
Dubois, PA, Dubois Rgnl, RNAV (GPS) RWY 25, Amdt 1
Dubois, PA, Dubois Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Dubois, PA, Dubois Rgnl, VOR/DME RWY 7, Amdt 4
Williamsport, PA, Williamsport Rgnl, ILS OR LOC RWY 27, Amdt 16A
Chamberlain, SD, Chamberlain Muni, Takeoff Minimums and Obstacle DP, Orig
Canadian, TX, Hemphill County, RNAV (GPS) RWY 22, Amdt 1
Graford, TX, Possum Kingdom, Takeoff Minimums and Obstacle DP, Orig-A
Higgins, TX, Higgins-Lipscomb County, Takeoff Minimums and Obstacle DP, Orig
Higgins, TX, Higgins-Lipscomb County, VOR/DME–A, Amdt 1
Perryton, TX, Perryton Ochiltree County, NDB–A, Amdt 4
Perryton, TX, Perryton Ochiltree County, RNAV (GPS) RWY 35, Orig
Perryton, TX, Perryton Ochiltree County, Takeoff Minimums and Obstacle DP, Orig
Rockport, TX, Aransas County, RNAV (GPS) RWY 14, Amdt 3
Rockport, TX, Aransas County, RNAV (GPS) RWY 18, Orig
Rockport, TX, Aransas County, RNAV (GPS) RWY 32, Orig
Rockport, TX, Aransas County, RNAV (GPS) RWY 36, Orig
Hot Springs, VA, Ingalls Field, GPS RWY 25, Orig-A, CANCELLED
Hot Springs, VA, Ingalls Field, RNAV (GPS) RWY 25, Orig
West Point, VA, Middle Peninsula Rgnl, RNAV (GPS) RWY 10, Amdt 1
Wenatchee, WA, Pangborn Memorial, RNAV (RNP) RWY 30, Orig
Fairmont, WV, Fairmont Muni Frankman Field, Takeoff Minimums and Obstacle DP, Amdt 6

[FR Doc. 2010–8836 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1450

Virginia Graeme Baker Pool and Spa Safety Act; Interpretation of Unblockable Drain

AGENCY: Consumer Product Safety Commission.

ACTION: Final interpretive rule.

SUMMARY: The Consumer Product Safety Commission ("Commission," "CPSC" or "we") is issuing its interpretation of the term "unblockable drain" as used in the Virginia Graeme Baker Pool and Spa Safety Act ("VGB Act").

DATES: This rule is effective April 27, 2010. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Troy Whitfield, Lead Compliance Officer, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7548 or e-mail *twhitfield@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Virginia Graeme Baker Pool and Spa Safety Act, Public Law 110–140, Title XIV ("the VGB Act") was signed into law on December 19, 2007 and became effective on December 19, 2008. The VGB Act's purpose is to prevent drain entrapment and child drowning in swimming pools and spas.

Section 1404(c)(1)(A)(i) of the VGB Act requires that each public pool and spa in the United States be equipped with drain covers that comply with the ASME/ANSI A112.19.8 performance standard or any successor standard. (The ASME/ANSI A112.19.8–2007 standard includes addenda which ASME codes and standards identify as A112.19.8a [for corrections to the UV light testing procedure] and 8b [for outlet covers used on self-contained spas]. The addenda are part of the 2007 version of the standard and only include pages with changed or revised items. For simplicity, any reference to ASME/ANSI A112.19.8–2007 in this preamble is intended to incorporate the associated addenda.) Section 1404(c)(1)(A)(ii) of the VGB Act requires that each public pool and spa in the United States with a single main drain other than an unblockable drain be equipped, at a minimum, with one or more of the following:

- Safety vacuum release system;
- Suction-limiting vent system;
- Gravity drainage system;
- Automatic pump shut-off system;
- Drain disablement; and/or
- Any other system determined by the Commission to be equally effective as, or better than, the enumerated systems at preventing or eliminating the risk of injury or death associated with pool drainage systems.

For purposes of this preamble, we will refer to these systems collectively as "secondary anti-entrapment systems." Thus, under the VGB Act, public pools or spas with single main drains other than unblockable drains must be equipped with a secondary anti-entrapment system. Section 1403(7) of the VGB Act defines an "unblockable drain" as "a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard."

In July 2009, CPSC staff issued draft technical guidance concerning an unblockable drain on the CPSC Web site (at *http://www.poolsafety.gov/unblockable.pdf*) and invited comment on this guidance. The draft technical guidance included specifications for a drain cover such that, when the drain cover is attached to a drain, the now-covered drain constitutes an "unblockable drain." As an unblockable drain, this drain would not require a secondary anti-entrapment system.

On October 21, 2009, the Commission issued a notice in the **Federal Register** (74 FR 54301) announcing that it would be conducting a public hearing to receive views from all interested parties about the draft guidance regarding unblockable drains. The Commission invited public participation at this

hearing. On November 4, 2009, the Commission conducted a public hearing on the staff's draft technical guidance and heard presentations from nine individuals.

Following the hearing, CPSC staff revised its interpretation of an unblockable drain and presented it to the Commission for consideration. On March 1, 2010, the Commission voted to instruct the staff to prepare a proposed interpretive rule regarding unblockable drains, consistent with the staff's interpretation.[1]

B. Response to Comments and Interpretation

CPSC staff based the "July 2009 Staff Draft Technical Guidance on Unblockable Drains" on the requirements for drain covers found in ASME/ANSI A112.19.8: "Based on the dimensions of the blocking element found in the standard, an outlet cover with measurements in excess of 18″ x 23″ (or a diagonal measurement greater than 29″) would provide a means to render the outlet 'unblockable' and subsequently, the sumps below (drains) would be inaccessible and unblockable providing the outlet cover remains in place. The implication is that if the outlet cover cannot be 'shadowed' by the solid blocking element the remaining open area of the cover will allow sufficient water flow to prevent the creation of entrapping forces. In reaching the definition for an unblockable drain, the characterization of a suction fitting is taken from the standard to include the sump and cover as a unit, along with all of the following: (1) The blocking element dimension and the diagonal measure to define a minimum size requirement; (2) The need for the remaining open flow area of the cover, once shadowed, to provide sufficient flow to prevent entrapment; and (3) The general requirements (of the standard) for fasteners and fastening integrity (i.e., the cover must stay in place)."

We received several comments as a result of the November 4, 2009 hearing and our interpretation of unblockable drains. We describe and respond to the comments in part B of this document.

1. *Diagonal Measurement:* Several comments stated that the interpretation of an unblockable drain should not include a 29-inch diagonal requirement as it was an over-simplification of the standard and not found in the ASME/ANSI A112.19.8 standard.

Response: The Commission agrees with these comments and has removed the 29-inch diagonal reference.

2. *18″ x 23″ Dimension:* Several commenters questioned the use of the 18″ x 23″ measurement. Some believed it was too small, while others claimed it was unnecessarily restrictive. Some commenters also indicated that the definition should make clear that the 18″ x 23″ measurement is intended to represent a blocked portion of the cover for consideration of the remaining open flow area, not simply the dimensions of the cover.

Response: The 18″ x 23″ dimension represents the dimensions of a 99th percentile male and mirrors the measurement used in the ASME/ANSI A112.19.8 standard referenced in the VGB Act. The Commission continues to believe this dimension is appropriate. The Commission agrees that the 18″ x 23″ dimension is intended to reference the remaining open flow area, once shadowed, and has revised its definition to make this clear.

3. *Blocking Element.* One commenter stated that the blocking element was not representative of "human skin" and therefore did not fully represent a body's ability to adhere to or seal around an outlet cover.

Response: The Commission agrees that the blocking element does not replicate the properties of human skin. However, the Commission is relying on the industry standard that is referenced in the VGB Act to further its interpretation of unblockable drain, and is thus using the same blocking element dimensions that are referenced in ASME/ANSI A112.19.8. Whether a flexible membrane or a more rigid material is used, it is the remaining open area of the cover when shadowed by the blocking element that is the important factor for consideration.

4. *Layers of Protection:* There were several comments regarding the VGB Act's intent to use a "layers of protection" approach to address entrapment.

Response: The "layers of protection" are applicable to incidents involving children having unfettered access to swimming pools in residential locations. In these cases, barriers and warnings, such as, doors, door alarms, motion detectors, pool covers, fencing with self-closing, self-latching gates, etc., can all be used to delay and/or prevent access to the hazard. However, for entrapment incidents, the approach to prevention is different. There are five different types of entrapment: Body, limb, evisceration, hair, and mechanical-related. The mechanisms of entrapment can be slightly different with each. The common element in all five entrapment scenarios is the necessity of an outlet cover as a layer of protection. All five entrapment issues are addressed by the appropriate flow rating and size of the cover when the cover remains in place. Currently, the "back-up" systems mentioned as secondary requirements in the VGB Act address some, but not all, potential hazard patterns. The "back-up" systems primarily address suction body entrapment and may address some limb entrapments. However, these back-up systems do not address the hair and mechanical entrapments, or the evisceration injuries associated with entrapments. Moreover, the back-up devices require the incident to occur before they respond and, depending on the type of entrapment and the circulation system present, the response may not prevent the entrapment or the injury.

Based on consideration of these comments, the Commission is creating a new § 1450.2(b) to interpret "unblockable drain" as follows:

> A suction outlet defined as all components, including the sump and/or body, cover/grate, and hardware such that its perforated (open) area cannot be shadowed by the area of the 18″ x 23″ Body Blocking Element of ASME/ANSI A112.19.8–2007 and that the rated flow through the remaining open area (beyond the shadowed portion) cannot create a suction force in excess of the removal force values in Table 1 of that Standard. All suction outlet covers, manufactured or field-fabricated, shall be certified as meeting the applicable requirements of the ASME/ANSI A112.19.8 standard.

C. Codification

The Commission is currently engaged in a separate interpretation of another term, "public accommodations facility," in the VGB Act. If finalized, this

[1] Commissioner Robert Adler, Commissioner Nancy Nord, and Commissioner Anne Northup voted to direct the staff to draft a proposed interpretive rule on unblockable drain covers, consistent with the definition in the staff memorandum dated February 3, 2010. Chairman Inez Tenenbaum and Commissioner Thomas Moore voted against directing the staff to draft a proposed interpretive rule on unblockable drain covers. Chairman Inez Tenenbaum, Commissioner Robert Adler, Commissioner Thomas Moore, and Commissioner Anne Northup each issued a statement, a copy of which is available from the Commission's Office of the Secretary or from the Commission's Web site, *http://www.cpsc.gov.* On March 22, 2010, Commissioner Robert Adler, Commissioner Nancy Nord, and Commissioner Anne Northup voted to direct the staff to issue a final interpretive rule on unblockable drains. A new ballot vote was prepared for voting on a final interpretive rule on unblockable drains. Commissioner Adler, Commissioner Nord, and Commissioner Northup voted to approve the final interpretive rule. Chariman Tenenbaum and Commissioner Moore voted not to approve the final interpretive rule. Commissioner Adler issued a statement with his vote, a copy of which is available from the Commission's Office of the Secretary or from the Commission's Web site, *http://www.cpsc.gov.*

interpretation would be codified as a part of CFR part 1450, where § 1450.1 would describe the scope of part 1450 and § 1450.2(a) would contain the definition of "public accommodations facility." Thus, this rule adds the new CFR part 1450, defines "unblockable drain" at 1450.2(b) and indicates that 1450.1 and 1450.2(a) are reserved.

D. Effective Date

Section 1405 of the VGB Act directs the Commission to establish a grant program to provide assistance to eligible States for specific uses related to pool and spa safety. The Commission has entered into an interagency agreement with the Centers for Disease Control and Prevention (CDC)/National Center for Injury Control and Prevention (NCIPC) to administer the grant program. CDC will be publishing the Funding Opportunity Announcement related to the grant program in early April. Because potential State applicants need a definitive understanding of the law in order to qualify for grant monies, and because CDC intends to publish the Funding Opportunity Announcement in April, this final rule resulting is effective upon publication. The rule does not impose obligations on regulated parties beyond those imposed by the VGB Act. In addition, as mentioned in the **DATES** section of this preamble, the Commission has already received and considered comments and/or presentations with regard to this issue on two separate occasions: (1) In response to the "July 2009 Staff Draft Technical Guidance on Unblockable Drains" and (2) during the November 4, 2009 Commission public hearing. Therefore, there is no need to provide a delayed effective date in order to allow for regulated parties to prepare for the rule.

List of Subjects in 16 CFR Part 1450

Consumer protection, Incorporation by reference, Infants and children, Law enforcement.

■ For the reasons stated above, the Commission adds part 1450 to subchapter B of title 16 of the Code of Federal Regulations to read as follows:

PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

Sec.
1450.1 [Reserved]
1450.2 Definitions.

Authority: 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794.

§ 1450.1 [Reserved]

§ 1450.2 Definitions.

(a) [Reserved]

(b) *Unblockable drain* includes a suction outlet defined as all components, including the sump and/or body, cover/grate, and hardware such that its perforated (open) area cannot be shadowed by the area of the 18″ x 23″ Body Blocking Element of ASME/ANSI A112.19.8–2007 and that the rated flow through the remaining open area (beyond the shadowed portion) cannot create a suction force in excess of the removal force values in Table 1 of that Standard. All suction outlet covers, manufactured or field-fabricated, shall be certified as meeting the applicable requirements of the ASME/ANSI A112.19.8 standard. You must proceed in accordance with ASME/ANSI A112.19.8–2007 (issued March 30, 2007), including Addenda A112.19.8a–2008 (August 11, 2008) and A112.19.8b–2009 (approved October 22, 2009), Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs. ASME/ANSI A112.19.8–2007, including Addenda A112.19.8a–2008 and A112.19.8b–2009 are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from American Society of Mechanical Engineers (ASME), ATTN: Secretary, A112 Standards Committee, Three Park Avenue, New York, New York 10016–5990; *www.asme.org,* telephone 800–843–2763. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Dated: *April 6, 2010.*

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–8160 Filed 4–26–10; 8:45 am]

BILLING CODE 6355–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Penalty Settlement Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, or Mine Act. Hearings are held before the Commission's Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is adopting an interim rule to streamline the process for settling civil penalties assessed under the Mine Act.

DATES: The interim rule takes effect on May 27, 2010. The Commission will accept written and electronic comments received on or before June 28, 2010.

ADDRESSES: Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944. Persons mailing written comments shall provide an original and three copies of their comments. Electronic comments should state "Comments on Penalty Settlement Rule" in the subject line and be sent to *mmccord@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

SUPPLEMENTARY INFORMATION:

Background

Since 2006, the number of new cases filed with the Commission has dramatically increased. From 2000 through 2005, an average of approximately 2300 cases were filed with the Commission per year. In 2006 and 2007, between approximately 3000 and 4000 new cases were filed each year, while in 2008 and 2009, approximately 9000 cases were filed each year.

In order to deal with its burgeoning caseload, the Commission is considering

various ways to streamline its processing of cases. One approach the Commission has explored is to simplify how it processes civil penalty settlements.

Under section 110(k) of the Mine Act, 30 U.S.C. 820(k), a proposed civil penalty that has been contested before the Commission may be settled only with the approval of the Commission. Under the Commission's current practice, a party submits to a Commission Administrative Law Judge a motion to approve a penalty settlement that includes for each violation the amount of the penalty proposed by the Department of Labor's Mine Safety and Health Administration, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. 29 CFR 2700.31(b). A Commission Judge considers the motion and evaluates the penalty agreed to by the parties based on the criteria set forth in section 110(i) of the Mine Act, 30 U.S.C. 820(i). If the Judge concludes that the settlement is consistent with the statutory criteria, the Judge issues a decision approving the settlement and setting forth the reasons for approval.

In all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act, 30 U.S.C. 815(c), or proceedings against individuals pursuant to section 110(c) of the Mine Act, 30 U.S.C. 820(c), the interim rule sets forth several new requirements regarding how parties file settlement motions with the agency. First, it requires that a party filing a motion to approve a penalty settlement submit a proposed decision approving settlement ("proposed order") with the motion. Second, it requires the filing party to submit the motion and proposed order electronically. The basic requirements for content of a motion to approve settlement still apply in that a movant must include in a motion for each violation the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and facts that support the penalty agreed to by the parties. A filing party may set forth this information in the proposed order and incorporate the proposed order by reference in the motion. The interim rule includes a new requirement that the party filing the motion certify that the opposing party has reviewed the motion and has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement. The interim rule also requires that, if a motion has been filed by a Conference and Litigation Representative ("CLR") on behalf of the Secretary of Labor, the accompanying proposed order must include a provision in which the Judge accepts the CLR to represent the Secretary in accordance with the notice of either limited or unlimited appearance previously filed with the Commission.

The content of orders approving settlement will vary depending upon the particular facts and circumstances of each case. The Commission will make sample forms for proposed orders approving settlement available on the Commission's Web site (*http://www.fmshrc.gov*).

In all penalty proceedings, except discrimination and section 110(c) proceedings, parties will file any settlement motion electronically by attaching electronic copies of the motion and proposed order to an e-mail to the Commission. The e-mail address to which settlement motions must be sent and instructions for filing are set forth on the Commission's Web site (*http://www.fmshrc.gov*). The Commission expects that the electronic submission of such settlement motions with proposed orders will significantly reduce the amount of time it takes for the Commission to dispose of settlement motions.

Electronic filing is effective upon the date of transmission. The transmitting party has the responsibility of retaining records showing the date of transmission, including receipts. Filers should request a delivery receipt when filing electronically with the Commission using the option for a delivery receipt, if available on the filer's e-mail program. This receipt is automatically generated when the e-mail is delivered to the Commission's e-mail server. Parties may also use the option of a read receipt, which is generated when the e-mail is opened.

Any signature line set forth within a motion to approve settlement submitted electronically must include the notation "/*s*/" followed by the typewritten name of the party or representative of the party filing the document. The Commission shall consider such a representation of the signature to be the original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized. *See* 29 CFR 2700.6. Although the interim rule requires electronic filing, the Commission may allow a party to file non-electronically with the permission of the Judge.

The interim rule requires that a copy of a motion and proposed order be served on the opposing party as expeditiously as possible. The Commission recognizes that some parties may not have the capability of being served with the motion and proposed order by e-mail, facsimile transmission, or commercial delivery. Under such circumstances, the filing party may serve the motion and proposed order on the opposing party by mail. Permission of the Judge is unnecessary for service by non-electronic means.

Currently, there are instances in which the Secretary files a motion to approve settlement before the Secretary has filed a petition for assessment of penalty. Some of those instances occur when the Commission has granted the Secretary an extension of time to file the petition, and the case settles before the petition is due under the extension. When a case settles before the Secretary has filed a petition, the Commission requires the filing party to file a copy of the proposed penalty assessment and copies of the citations and/or orders with the motion to approve settlement and does not require the Secretary to file the petition. The interim rule continues this practice. Thus, under the interim rule, if the filing party electronically files a motion to approve settlement and proposed order before the Secretary has filed a petition for assessment of penalty, the filing party must also file as attachments electronic copies of the proposed penalty assessment and citations and orders at issue. Under such circumstances, the Secretary need not file a petition for assessment of penalty.

The interim rule also provides that if a party filing a motion to approve settlement and proposed order fails to include in the motion and proposed order information required by this rule and the Commission's instructions on its Web site, the Commission will not accept for filing the motion and proposed order. Rather, the Commission will inform the filing party of the need for correction and resubmission.

Discrimination proceedings and section 110(c) proceedings are specifically excepted from paragraph (b) of the Commission's new interim rule. The Commission's current practice shall continue to apply to such proceedings. Thus, in discrimination or section 110(c) proceedings, a party will submit a hard paper copy of a motion to approve settlement to the Judge that includes for each violation the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and the supporting facts. Filing and service in such proceedings shall be accomplished in accordance with the provisions of 29 CFR 2700.5 and 2700.7.

Notice and Public Procedure

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act ("APA") do not apply to rules of agency procedure (*see* 5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on the interim rule in order to assist the Commission in its deliberations regarding the adoption of a permanent rule. The Commission will accept public comments until June 28, 2010.

The Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because this rule does not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act, 5 U.S.C. 801, is not applicable here because, pursuant to 5 U.S.C. 804(3)(C), this rule "does not substantially affect the rights or obligations of non-agency parties."

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission amends 29 CFR part 2700 as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

■ 2. Section 2700.5 is amended by revising paragraph (b) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(b) *Where to file.* Unless otherwise provided for in the Act, these rules, or by order:

(1) Until a Judge has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; facsimile delivery as allowed by these rules (*see* section 2700.5(e)), shall be transmitted to (202) 434–9954.

(2) After a Judge has been assigned, and before a decision has been issued, documents shall be filed with the Judge at the address set forth on the notice of the assignment.

(3) Documents filed in connection with interlocutory review shall be filed with the Commission in accordance with section 2700.76.

(4) After the Judge has issued a final decision, documents shall be filed with the Commission as described in paragraph (b)(1) of this section.

■ 3. Revise § 2700.31 to read as follows:

§ 2700.31 Penalty settlement.

(a) *General.* A proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion. A motion to approve a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties.

(b) *Motion accompanied by proposed order.* In all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act, 30 U.S.C. 815(c), or proceedings against individuals pursuant to section 110(c) of the Mine Act, 30 U.S.C. 820(c), a settlement motion must be accompanied by a proposed order approving settlement. Forms for proposed orders approving settlement are available on the Commission's Web site (*http://www.fmshrc.gov*).

(1) *Certification.* The party filing a motion must certify that the opposing party has reviewed the motion, and has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement.

(2) *Appearance by CLR.* If a motion has been filed by a Conference and Litigation Representative ("CLR") on behalf of the Secretary, the proposed order approving settlement accompanying the motion shall include a provision in which the Judge accepts the CLR to represent the Secretary in accordance with the notice of either limited or unlimited appearance previously filed with the Commission.

(3) *Filing and service of motion accompanied by proposed order.*

(i) *Electronic filing.* A motion and proposed order shall be filed electronically according to the requirements set forth in this rule and instructions on the Commission's Web site (*http://www.fmshrc.gov*). Filing is effective upon the date of the electronic transmission of the motion and proposed order. The transmitting party is responsible for retaining records showing the date of transmission, including receipts. Any signature line set forth within a motion to approve settlement submitted electronically shall include the notation "/s/" followed by the typewritten name of the party or representative of the party filing the document. Such representation of the signature shall be deemed to be the original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized. *See* 29 CFR 2700.6. A motion and proposed order filed electronically constitute written documents for the purpose of applying the Commission's procedural rules (29 CFR part 2700), and such rules apply unless an exception to those rules is specifically set forth in this rule. Any copies of the motion and proposed order which have been printed and placed in the official case file by the Commission shall have the same force and effect as original documents.

(ii) *Filing by non-electronic means.* A party may file a motion to approve settlement and an accompanying proposed order by non-electronic means only with the permission of the Judge.

(iii) *Service.* A settlement motion and proposed order shall be served on all parties or their representatives as expeditiously as possible. If a party cannot be served by e-mail, facsimile transmission, or commercial delivery, a copy of the motion and proposed order may be served by mail. A certificate of service shall accompany the motion and proposed order setting forth the date and manner of service.

(4) *Filing of motion and proposed order prior to filing of petition.* If a motion to approve settlement and proposed order is filed with the Commission before the Secretary has filed a petition for assessment of penalty, the filing party must also submit as attachments electronic copies of the proposed penalty assessment and citations and orders at issue. If such attachments are filed, the Secretary need not file a petition for assessment of penalty.

(5) *Non-acceptance of motion and proposed order.* If a party filing a motion to approve settlement and a proposed order fails to include in the

motion and proposed order information required by this rule and the Commission's instructions posted on the Commission's Web site, the Commission will not accept for filing the motion and proposed order. Rather, the Commission will inform the filing party of the need for correction and resubmission.

(c) *Final order.* Any order by the Judge approving a settlement shall set forth the reasons for approval and shall be supported by the record. Such order shall become the final order of the Commission 40 days after issuance unless the Commission has directed that the order be reviewed. A Judge may correct clerical errors in an order approving settlement in accordance with the provisions of 29 CFR 2700.69(c).

Dated: April 21, 2010.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 2010–9689 Filed 4–26–10; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 50 and 100

RIN 1219–AB63

Criteria and Procedures for Proposed Assessment of Civil Penalties/ Reporting and Recordkeeping: Immediate Notification of Accidents

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: MSHA published a direct final rule for parts 50 and 100 on December 29, 2009. MSHA stated that the Agency would withdraw the direct final rule if the Agency received significant adverse comments. Because the Agency did not receive any significant adverse comment, the direct final rule became effective. This notice confirms the effective date.

DATES: *Effective Date:* March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: MSHA received comments on the direct final rule indicating that some members of the mining industry misunderstood the Agency's intent. For clarification, the Agency intends that the phrase, "Any other accident," as used in paragraph (d) of MSHA's standard at § 50.10 refers to:

- An entrapment of an individual for more than 30 minutes; and
- Any other accident as defined in § 50.2(h)(4)–(12).

After reviewing the comments, MSHA determined that they were not "significant adverse comments." Therefore, the Agency did not withdraw the direct final rule.

The comments can be viewed on MSHA's Web site at *http://www.msha.gov/REGS/Comments/E9-30608/immediatenotify.asp.*

Dated: April 21, 2010.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2010–9675 Filed 4–26–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0271]

RIN 1625–AA00

Safety Zone; Extended Debris Removal in the Lake Champlain Bridge Construction Zone (Between Vermont and New York), Crown Point, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters immediately surrounding the Lake Champlain Bridge construction zone between Chimney Point, VT and Crown Point, NY. This rule re-establishes a safety zone that was scheduled to expire prior to the completion of the removal of debris from the old Crown Point bridge demolition. The debris must be cleared from the navigable waterway prior to opening the channel to vessel traffic. This rule is necessary to provide safety of life on the navigable waters within this area during the demolition and debris removal of the bridge piers within this construction zone.

DATES: This rule is effective in the CFR on April 27, 2010. This rule is effective with actual notice for purposes of enforcement from 12:01 a.m. on Friday, April 16, 2010 through 11:59 p.m. on Saturday, May 15, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0271 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0271 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Laura van der Pol, Coast Guard Sector Northern New England, Waterways Management Division; telephone 207–741–5421, e-mail *Laura.K.vanderPol1@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The New York State Department of Transportation recently requested an extension to deadline for removing the concrete piers (6 and 7) which line the main channel in Crown Point, NY. These piers can only be effectively removed by explosive charges, and both the piers and subsequent debris must be removed before the Coast Guard can reopen the channel to all vessel traffic. The Coast Guard did not receive notification of delays in the debris removal operations in sufficient time to complete a comment period prior to the expiration of the existing safety zone. As delaying the demolition and debris removal process is contrary to public interest, and there is continued need to protect waterway users from hazardous debris in the navigational channel, a comment period is both impractical and unnecessary.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons enumerated above.

Basis and Purpose

On December 28th, 2009 the New York State Department of Transportation demolished the Lake Champlain Bridge after an inspection showed significant deterioration of the concrete piers supporting the bridge as well as extreme wear to the metal structure. For that demolition and subsequent debris removal, the Coast Guard established a safety zone around the construction site, an exclusion area that remains in effect until April 15, 2010 (docket number USCG–2009–1094). While the Coast Guard had intended to re-open the area to all traffic upon expiration of that safety zone, it is unsafe to do so until the debris removal process is complete and the area has been surveyed.

The New York State Department of Transportation recently requested an extension to the original April 15, 2010 deadline for clearing the main channel as there have been operational delays that did not allow the removal of concrete piers 6 and 7 at an earlier date. As the current safety zone does not provide sufficient time for complete debris removal and a channel survey, the Coast Guard is establishing this temporary safety zone to meet that need.

A pier explosion is tentatively scheduled for Friday, April 9, 2010 or Saturday, April 10, 2010 depending on weather and operations necessary to place explosive charges on the piers. The pier demolition will put additional debris in the navigational channel that must be cleared and surveyed prior to vessels transiting through the area.

This safety zone will extend the current zone by one month (through May 15th, 2010) to allow for complete debris removal in the main channel as well as a side-scan sonar survey to verify the area is safe for navigation. The Captain of the Port will enforce a zone 1500 feet to the north and south of the Lake Champlain Bridge construction site. The Captain of the Port may suspend part or all of the zone if the Coast Guard determines that it is safe to do so or if a channel survey is completed prior to May 15th, 2010. The notifications for such an event are discussed below under "List of Subjects".

This safety zone is being established to provide for the safety of life on the navigable waters by prohibiting entry into an area surrounding the Lake Champlain Bridge construction zone during continued debris removal.

Discussion of Rule

This rule establishes a temporary safety zone of 1500 feet to either side of the Lake Champlain Bridge construction zone, between 44°02′06″ N, 073°25′41″ W to the north and 44°01′53″ N, 073°25′06″ W to the south. The Captain of the Port may suspend enforcement to part or all of this zone when deemed safe to do so.

Entry into this zone by any vessel or person is strictly prohibited through Saturday, May 15th, 2010 unless specifically authorized by the Captain of the Port, Sector Northern New England.

The Captain of the Port anticipates little negative impact on vessel traffic from this temporary safety zone. This safety zone extends the existing limited access area by one month, and it may be suspended after completion of a channel survey that verifies the safety of the main channel for navigation.

Additionally, details of the project and safety zone enforcement will continue to be made via a Local Notice to Mariners and Broadcast Notice to Mariners.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule is not a significant regulatory action because there is no commercial traffic in the region, and the locks that allow passage through the New York State Canal System do not open until May 1, 2010. Until that time, the recreational traffic through the area is minimal. Also, traffic will be allowed to pass through the zone with the permission of the Coast Guard Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the Lake Champlain Transportation Company, and the owners or operators of vessels intending to transit or anchor in a portion of the navigable waters immediately surrounding the Lake Champlain Bridge construction zone between Chimney Point, VT and Crown Point, NY.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: There is no commercial traffic in the region, and recreational boaters will be allowed to pass through the zone with the permission of the Coast Guard Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call or e-mail Lieutenant Junior Grade Laura van der Pol, Coast Guard Sector Northern New England, Waterways Management Division; telephone 207–741–5421, e-mail *Laura.K.vanderPol1@uscg.mil.*

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T10–0271 to read as follows:

§ 165.T10–0271 Safety Zone; Extended Debris Removal in the Lake Champlain Bridge Construction Zone (between Vermont and New York), Crown Point, NY.

(a) *Location.* The following area is a safety zone: All navigable waters from surface to bottom extending 1500 feet to either side of the Lake Champlain Bridge construction zone, marked by coordinates 44″02′06″ N, 073″25′41″ W to the north and 44″01′53″ N, 073″25′06″ W to the south. Visually, this area is marked from shore to shore by a line between Orchard Point in New York to Hoist Point in Vermont to the north, and a line passing through the assigned position of Crown Point Lighted Buoy 58 (LLNR 39865) at 44″01′42″ N, 073″24′57″ W and the southern coordinate indicated above. If conditions allow, the Coast Guard Captain of the Port, Sector Northern New England may suspend enforcement for all or a portion of the safety zone. Notification of such a reduction in the safety zone will be made via Broadcast Notice to Mariners.

(b) *Regulations.* (1) The general regulations in § 165.23 apply.

(2) In accordance with the general regulations in § 165.23, entry into or remaining within this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Sector Northern New England.

(3) Persons desiring to transit the area of the safety zone may contact the Captain of the Port, Sector Northern New England Command Center at 207–741–3020 or on VHF channel 16 (156.8 MHz) to seek permission to transit the zone. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Sector Northern New England or his designated representative.

(c) *Effective Period.* This section is effective from Friday, April 16th, 2010 through Saturday, May 15th, 2010. The Captain of the Port will notify the maritime community of enforcement of this safety zone via Local Notices to

Mariners and Broadcast Notice to Mariners.

Dated: April 8, 2010.

B.J. Downey, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Sector Northern New England Acting.

[FR Doc. 2010–9680 Filed 4–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0223]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during multiple periods beginning on May 29, 2010 and ending on June 30, 2010. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This action will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced on May 29, 2010 from 10 p.m. through 10:30 p.m.; on June 05, 2010 from 10 p.m. through 10:30 p.m.; on June 12, 2010 from 10 p.m. through 10:30 p.m.; on June 16, 2010 from 9:15 p.m. through 10:45 p.m.; on June 19, 2010 from 10 p.m. through 10:30 p.m.; on June 23, 2010 from 9:15 p.m. through 9:45 p.m.; on June 26, 2010 from 10 p.m. through 10:30 p.m.; on June 30, 2010 from 9:15 p.m. through 9:45 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154, e-mail *Adam.D.Kraft@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL, 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on May 29, 2010 from 10 p.m. through 10:30 p.m.; on June 05, 2010 from 10 p.m. through 10:30 p.m.; on June 12, 2010 from 10 p.m. through 10:30 p.m.; on June 16, 2010 from 9:15 p.m. through 10:45 p.m.; on June 19, 2010 from 10 p.m. through 10:30 p.m.; on June 23, 2010 from 9:15 p.m. through 9:45 p.m.; on June 26, 2010 from 10 p.m. through 10:30 p.m.; on June 30, 2010 from 9:15 p.m. through 9:45 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 Safety Zone, Chicago Harbor, Navy Pier Southeast, Chicago IL and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: April 8, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2010–9681 Filed 4–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2009–0231]

RIN 2126–AB19

Fees for the Unified Carrier Registration Plan and Agreement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes annual registration fees and a fee bracket structure for the Unified Carrier Registration (UCR) Agreement for the calendar year beginning January 1, 2010, as required under the Unified Carrier Registration Act of 2005, enacted as Subtitle C of Title IV of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended.

DATES: *Effective Date:* April 27, 2010.

ADDRESSES: Copies or abstracts of all comments and background documents referenced in this document are in Docket No. FMCSA–2009–0231. For access to the docket, go to:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Go to the "Help" section of *regulations.gov* to find electronic retrieval help and guidelines. *Regulations.gov* is generally available 24 hours each day, 365 days each year.
- *DOT Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Docket Management Facility hours are between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for 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 U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476), or you may visit *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Julie Otto, Office of Enforcement and Program Delivery, (202) 366–0710, FMCSA, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590 or by e-mail at: *FMCSAregs@dot.gov.*

SUPPLEMENTARY INFORMATION: The preamble is organized as follows:

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I. List of Abbreviations

The following is a list of abbreviations used in this document:

Alabama PSC Alabama Public Service Commission
AMSA American Moving and Storage Association
ATA American Trucking Associations
Board Unified Carrier Registration Board of Directors
California DMV California Department of Motor Vehicles
CMV Commercial Motor Vehicle
CTA California Trucking Association
CVSA Commercial Vehicle Safety Alliance
FMCSA Federal Motor Carrier Safety Administration
IFTA International Fuel Tax Agreement
IRP International Registration Plan
MCMIS Motor Carrier Management Information System
Missouri DOT Missouri Department of Transportation
NAICS North American Industry Classification System
NCSTS National Conference of State Transportation Specialists
NPTC National Private Truck Council
Pennsylvania PUC Pennsylvania Public Utility Commission
RPR Registration Percentage Reasonableness
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SSRS Single State Registration System
TCA Truckload Carriers Association
TIA Transportation Intermediaries Association
TRLA Truck Renting and Leasing Association
UCR Unified Carrier Registration
UCR Agreement Unified Carrier Registration Agreement
UPS United Parcel Service

II. Legal Basis for the Rulemaking

This rule involves an adjustment in the annual registration fees for the Unified Carrier Registration Agreement (UCR Agreement) established by 49 U.S.C. 14504a, enacted by section 4305(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (119 Stat. 1144, 1764 (2005)). Section 14504a states that the "Unified Carrier Registration Plan * * * mean[s] the organization * * * responsible for developing, implementing, and administering the unified carrier registration agreement" (49 U.S.C. 14504a(a)(9)) (UCR Plan). The UCR Agreement developed by the UCR Plan is the "interstate agreement governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders and leasing companies * * *" (49 U.S.C. 14504a(a)(8)).

Congress in SAFETEA–LU also repealed 49 U.S.C. 14504 governing the Single State Registration System (SSRS) (SAFETEA–LU section 4305(a)).[1] The legislative history indicates that the purpose of the UCR Plan and Agreement is both to "replace the existing outdated system [SSRS]" for registration of interstate motor carrier entities with the States and to "ensure that States don't lose current revenues derived from SSRS" (S. Rep. 109–120, at 2 (2005)).[2]

The statute provides for a 15-member Board of Directors for the UCR Plan and Agreement (Board) to be appointed by the Secretary of Transportation. The statute specifies that the Board should consist of one individual (either the Federal Motor Carrier Safety Administration (FMCSA) Deputy Administrator or another Presidential appointee) from the Department of Transportation; four directors (one from each of the four FMCSA service areas), selected from among the chief administrative officers of the State agencies responsible for administering the UCR Agreement; five directors from among the professional staffs of State agencies responsible for administering the UCR Agreement, to be nominated by the National Conference of State Transportation Specialists (NCSTS); and five directors from the motor carrier industry, of whom at least one must be from a national trade association representing the general motor carrier of property industry and one from a motor carrier that falls within the smallest fleet fee bracket. The establishment of the Board was announced in the **Federal Register** on May 12, 2006 (71 FR 27777). On July 19, 2007, FMCSA published a notice announcing the reappointment to the Board of the five Board members from the State agencies nominated by NCSTS (72 FR 39660). On June 30, 2008, FMCSA published a notice announcing the reappointment of the members from the four FMCSA service areas to the Board (73 FR 36956). On January 28, 2010, (75 FR 4521) FMCSA published a request for public comments along with recommendations for appointment of the five members from the motor carrier industry.[3]

Among its responsibilities, the Board is required to submit to the Secretary of Transportation[4] a recommendation for the initial annual fees to be assessed motor carriers, motor private carriers, freight forwarders, brokers and leasing companies (49 U.S.C. 14504a(d)(7)(A)). FMCSA is directed to set the fees within 90 days after receiving the Board's recommendation and after notice and opportunity for public comment (49 U.S.C. 14504a(d)(7)(B)). Subsequent adjustments to the fees and fee brackets must be adopted following the same timelines and procedures (recommendation by the Board and review and adoption by FMCSA) after notice and an opportunity for public comment (*Id.*). As provided in 49 U.S.C. 14504a(f)(1)(B): "The fees shall be determined by [FMCSA] based upon the recommendations of the [UCR] Board * * *." The statute also directs both the Board and FMCSA to consider several relevant factors in their respective roles of recommending and setting the fees (49 U.S.C. 14504a(d)(7)(A), (f)(1) and (g)). Thus, FMCSA has an obligation to consider independently the Board's recommendation in light of the statutory requirements, and to make its own determination of the appropriate fees and fee bracket structure, including modifying the Board's recommendation, if necessary.

III. Statutory Requirements for the UCR Fees

The statute specifies that fees are to be determined by FMCSA based upon the recommendation of the Board. In recommending the level of fees to be assessed in any agreement year, and in setting the fee level, both the Board and FMCSA shall consider the following factors:

- Administrative costs associated with the UCR Plan and Agreement.
- Whether the revenues generated in the previous year and any surplus or shortage from that or prior years enable the participating States to achieve the revenue levels set by the Board.
- Provisions governing fees in 49 U.S.C. 14504a(f)(1).

[1] This repeal became effective on January 1, 2008, in accordance with section 4305(a) of SAFETEA–LU and section 1537(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266, 467 (Aug. 3, 2007).

[2] The Senate bill's provisions were enacted "with modifications." H.R. Rep. No. 109–203, at 1020 (2005) (Conf. Rep.).

[3] The terms of the current members from the motor carrier industry have expired, but all but one continue to serve until either they are reappointed or successors are appointed (49 U.S.C. 14504a(d)(1)(D)(iii) and (iv)).

[4] The Secretary's functions under section 14504a have been delegated to the Administrator of the Federal Motor Carrier Safety Administration. 49 CFR 1.73(a)(7), as amended (71 FR 30833, May 31, 2006).

Subsection (f)(1) provides that the fees charged to a motor carrier, motor private carrier, or freight forwarder under the UCR Agreement shall be based on the number of commercial motor vehicles owned or operated by the motor carrier, motor private carrier, or freight forwarder. The statute initially defined "commercial motor vehicles" (CMVs) for this purpose as including both self-propelled and towed vehicles (former 49 U.S.C. 14504a(a)(1)(A) and 31101(1)). The fees set in 2007, and applied, as well, in 2008 and 2009, were determined on that basis. However, section 701(d)(1)(B) of the Rail Safety Improvement Act of 2008, Public Law 110–432, Div. A, 122 Stat. 4848, 4906 (Oct. 16, 2008) amended the definition of CMV for the purpose of setting UCR fees for years beginning after December 31, 2009, to mean a "self-propelled vehicle described in section 31101 [of title 49, United States Code]" (49 U.S.C. 14504a(a)(1)(A)(ii)). Fees charged to a broker or leasing company under the UCR Agreement shall be equal to the smallest fee charged to a motor carrier, motor private carrier, and freight forwarder.

Section 14504a(f)(1) also stipulates that for the purpose of charging fees the Board shall develop no more than 6 and no fewer than 4 brackets of carriers (including motor private carriers) based on the size of the fleet, *i.e.,* the number of CMVs owned or operated. The fee scale is required to be progressive in the amount of the fee. The registration fees for the UCR Agreement may be adjusted within a reasonable range on an annual basis if the revenues derived from the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or exceed those revenues (49 U.S.C. 14504a(f)(1)(E)).

Overall, the fees assessed under the UCR Agreement must produce the level of revenue established by statute. Section 14504a(g) establishes the revenue entitlements for States that choose to participate in the UCR Plan. That section provides that a participating State, which participated in SSRS in the registration year prior to the enactment of the Unified Carrier Registration Act of 2005 (*i.e.,* the 2004 registration year), is entitled to receive revenues under the UCR Agreement equivalent to the revenues it received in 2004. Participating States that also collected intrastate registration fees from interstate motor carrier entities (whether or not they participated in SSRS) are also entitled to receive revenues of this type under the UCR Agreement, in an amount equivalent to the amount received in the 2004 registration year. The section also requires that States that did not participate in SSRS in 2004, but which choose to participate in the UCR Plan, may receive revenues not to exceed $500,000 per year.

Participating states are required by statute to use UCR revenue "for motor carrier safety programs, enforcement, or the administration of the UCR plan and UCR agreement" (49 U.S.C. 14504a(e)(1)(B)). In addition, as permitted by statute, at least one-third of the participating states use the revenue produced by the UCR program to provide their share of the costs of the Motor Carrier Safety Assistance Program (MSCAP) that is not provided by a grant from FMCSA. The purpose of the MCSAP grant program is "to improve commercial motor vehicle safety and enforce commercial motor vehicle regulations, standards, or orders * * *" (49 U.S.C. 31102(a)). The UCR revenues that contribute to the MCSAP are used primarily for driver/vehicle inspections, traffic enforcement, compliance reviews, public education and awareness, and data collection. A great deal of the funding is used to pay state employee salaries to conduct these activities.

Statutory Requirements for the Fees

The FMCSA acknowledges stakeholders' concerns regarding all the factors under the statute that should have been considered when determining the fees. For example, in response to the September 3, 2009, notice of proposed rulemaking (NPRM) the American Trucking Associations, Inc. (ATA) and a number of other industry members and associations assert that FMCSA has not considered all of the relevant factors under the statute in considering the fees that should be set for 2010 for the UCR Plan and Agreement. Specifically, ATA asserts that the Agency should have considered: (1) The state of the economy; (2) the effect of the fee increase on the trucking industry; (3) the continuing failure of the States to audit and enforce UCR Agreement requirements; (4) the effect on future collections of the elimination of towed vehicles from the fleets; (5) the danger of spiraling fee increases; and (6) the creation of a "moral hazard" by FMCSA's acquiescence to an increase in the fees. However, only one of these factors is specified expressly in the statute—the effect of the elimination of trailers. The factors that FMCSA believes to be relevant under the statute are addressed in more detail below. FMCSA will address below several comments regarding the economic significance of the rulemaking and the impact of the fees to industry. The Agency has chosen to discuss these issues in the most relevant sections of the rule, rather than in the section reserved for comments.

FMCSA's interpretation of its responsibilities under 49 U.S.C. 14504a in setting fees for the UCR Plan and Agreement is guided by the primacy the statute places on the need both to set and to adjust the fees so that they "provide the revenues to which the States are entitled." The statute links the requirement that the fees be adjusted "within a reasonable range" to the provision of sufficient revenues to meet the entitlements of the participating States (49 U.S.C. 14504a(f)(1)(E), see also 49 U.S.C. 14504a(d)(7)(A)(ii)).

The legislative history accompanying the enactment of the statute in 2005 confirms this primary focus on the need to provide the States the revenue levels set in accordance with the statute:

> States that currently participate in the SSRS and choose to participate in UCRS [sic] would be *guaranteed* the revenues they derived from SSRS during the last fiscal year ending prior to the enactment of this Act. States that did not participate in SSRS but opt to join UCRS [sic] would be *entitled* to annual revenues of not more than $500,000. (H.R. Rep. 109–203 at 1019 (2005) (Conf. Rep.) (emphasis added))

The emphasized words support FMCSA's interpretation of the statute, which gives primacy to providing the revenue entitlements to the participating States in each year.

Section 14504a(h)(4) gives additional support for this interpretation. As noted in the comments by the Commercial Vehicle Safety Alliance (CVSA), this provision explicitly requires FMCSA to reduce the fees for all motor carrier entities in the year following any year in which the depository retains any funds in excess of the amount necessary to satisfy the revenue entitlements of the participating States and the UCR Plan's administrative costs. No analogous provision in the statute requires an increase in the fees in the following year to make up for any shortfall in the revenues provided by the fees.

In light of this context, FMCSA has interpreted the statutory text that directs that any annual adjustment be "within a reasonable range" to mean that the determination of what is reasonable must be made in light of the statutory objective. *Whitman* v. *American Trucking Associations, Inc.,* 531 U.S. 457, 466 (2001) ("Words that can have more than one meaning are given context, however, by their surroundings.") and *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132 (2000) ("[T]he meaning—or

ambiguity—of certain words or phrases may only become evident when placed in context.") Therefore, if consideration of a factor frustrates the statutory objective of providing the participating States sufficient revenues, the statute does not permit FMCSA to consider it as a relevant factor.

IV. Background

The initial UCR fees and fee structure were published by FMCSA on August 24, 2007 (72 FR 48585), which allowed the Board to begin collecting fees (49 U.S.C. 14504a). On February 1, 2008, the Board submitted the 2008 recommendation to FMCSA, indicating that it was "too early to ascertain whether the revenues collected in 2007 will equal or approximate the total revenue" to which the States are entitled. A copy of this recommendation is provided in this docket. As a result, on February 26, 2008 (73 FR 10157), FMCSA published correcting amendments to the 2007 final rule, clarifying that the fees and fee structure were established for every registration year unless (and until) the Board recommended an adjustment to the annual fees (73 FR 10157). On July 11, 2008, the Board sent a letter to FMCSA stating that the fees would remain the same for 2009 as for 2007 and 2008. The Board stated that "additional time to register entities, check that carriers registered in the correct bracket, and establish effective roadside enforcement" would result in better collection of revenue. A copy of this letter is provided in this docket. The table below shows the fees and fee structure in place from 2007 to 2009.

TABLE 1—UCR FEES AND FEE STRUCTURE 2007 TO 2009

Bracket	Number of CMVs owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$39	$39
B2	3–5	116	
B3	6–20	231	
B4	21–100	806	
B5	101–1,000	3,840	
B6	1,001 and above	37,500	

From collection years 2007 to the present, some participating States have achieved their revenue entitlement while others have exceeded it. In the latter case, the excess amount is forwarded to a depository established by the Board for distribution to those States that have not collected enough fees to reach their entitlement (49 U.S.C. 14504a(h)(2) and (3)). However, overall, revenue collections in 2009, like the previous years, have fallen short. The following table shows the amount of revenue shortfall for each registration year, based on information provided by the Board. The participating States are approximately 28 percent short of collecting their revenue entitlement.

TABLE 2—UCR REGISTRATION SUMMARY 2007 TO 2009*

Registration year	State revenue entitlement	Entities registered	Revenue received	Revenue shortfall
2007	$101,772,400	237,157	$73,937,310	$27,835,090
2008	107,777,060	270,794	76,617,155	31,159,905
2009	107,777,060	282,483	77,148,988	30,628,072

* Does not include estimated administrative expenses and revenue reserve that are included in the overall revenue target.

In early 2009, the Board began discussions to address the shortfall in the 2010 fee recommendation. On February 12, 2009, the Board held a public meeting by telephone conference call to discuss the 2010 fees and fee structure. At that meeting, a motion was made to recommend a proposal that passed with a vote of 10 to 3, with one abstention. On April 3, 2009, the Board submitted a recommendation based on this proposal to the Secretary. The recommendation is available in the docket.

Upon review by FMCSA, several fundamental issues were identified in the assumptions of the April 3 recommendation. To clarify the issues and assist the Board, FMCSA hosted a conference call on April 23, 2009, with the Board's chair and the chair of the Revenue and Fees Subcommittee. After this discussion, the Subcommittee met and discussed several options at the May 14, 2009, Board meeting. No consensus was reached. At the June 16, 2009, meeting, the Board discussed informal options developed by a member of both the Board and the Revenue and Fees Subcommittee. The Board voted to reconsider the April 3 recommendation upon hearing these new options, and the matter was referred back to the Subcommittee for further action. At the July 9, 2009, meeting, a vote was taken on two new options. However, both options received an equal number of votes; the Board was unable to reach consensus on either proposal. On July 15, 2009, the Board sent a letter to the Secretary noting this fact and asked FMCSA to proceed with the rulemaking process using the April 3 recommendation. The letter from the Board dated July 15, 2009, is available in the docket.

A. FMCSA Analysis of Board Recommendation

The Agency conducted its own analysis of the Board's formal recommendation, as well as alternative fee proposals considered by the Revenue and Fee Subcommittee of the Board. FMCSA concluded that it could not base its fee determination on the Board's recommendation, and made an independent analysis of two issues in particular: (1) "bracket shifting," *i.e.,* motor carriers registering in a fee

bracket that is different from that based on the fleet size reflected in MCMIS, and (2) the number of motor carrier entities that could be expected to comply with the statute and register, and the related issue of the States' level of enforcement. FMCSA carefully examined the Board's entire fee recommendation, including its methodology and specific findings. FMCSA also considered the factors specified in SAFETEA–LU and utilized data and analysis provided by the Board in its fee recommendation, as well as data from other sources. Based on its independent analysis, FMCSA published an NPRM on September 3, 2009 (74 FR 45583), containing its own fee proposal.

FMCSA's NPRM described several alternative fee structures for 2010. First, it noted a proposal informally supported by industry representatives on the Board as the basis for fees in 2010 (described in Table 4 in the NPRM (74 FR 45587)). This fee structure, like the other fee structure evaluated by FMCSA, reflected the revised definition of CMV consisting only of power units. However, it did not incorporate any adjustments for bracket shifting and assumed full compliance by active motor carriers based on an assumption that all 433,535 apparently active entities, as identified in MCMIS and considered by the Board to be active, would register to pay fees in 2010.

FMCSA noted that experience over the 3 years of UCR's existence, 2007–2009, had shown that a significant proportion of motor carriers were paying fees based on fleet sizes different from (and usually smaller than) what would have been expected from the fleet sizes reported to FMCSA. The net effect of this bracket shifting has been a significant reduction in expected revenue (25.04 percent in 2008). FMCSA concluded that bracket shifting, which can be appropriate under the statute as explained in the NPRM, occurs because the available data sources used to develop UCR fees and fee structure do not always accurately predict actual registrations (74 FR 45589).

FMCSA also noted in the NPRM that States participating in the UCR program sometimes have difficulty registering all of the motor carriers that appear in the MCMIS database, even after certain filters have been applied to identify motor carriers that have had recent activity and are still most likely to be active. As FMCSA noted, the reasons for and solutions to the level-of-compliance issues are matters of significant disagreement between the States and industry representatives on the Board. The States have taken the position that low compliance is due to limitations in the MCMIS data that prevent identification of the appropriate active population, even with the use of data filters, combined with the reluctance of some industry members to register. Industry representatives have taken the position that insufficient State enforcement activities are to blame (74 FR 45591). FMCSA asked in particular for public comment on the reasons for the low level of compliance and on potential solutions to determining the reasonableness of the compliance and enforcement activities by the States, including how they would support a reasonable adjustment in the current fees (74 FR 45591).

B. Compliance and Enforcement

FMCSA concluded that a compliance rate of 100 percent is not feasible. However, the Agency did agree with the concept of setting fees based on an assumption of significantly improved compliance and enforcement activities by the States. Thus, the fees proposed in the NPRM were set assuming that participating States would achieve a compliance rate of 90 percent. Because ten non-participating States do not receive revenues from the UCR Plan, FMCSA assumed that they would have less incentive to exert effort on enforcement. However, in FMCSA's opinion, improved roadside enforcement by participating States, to capture potential registrants from non-participating States when they cross borders into participating States, would improve compliance rates among carriers from non-participating States to approximately 59 percent. The Agency therefore based its fee proposal on a weighted average projected compliance rate of 86.42 percent.[5]

C. Bracket Shift

FMCSA estimated the effects of bracket shifting and, in doing so, recognized that carriers with different fleet sizes pay different fees and that compliance rates vary by carrier size. The Agency's proposal takes into account the effect of increased registration rates, due to anticipated improvements in compliance and enforcement, on revenue collection. This adjustment assumed that the carriers that remain non-compliant despite increased enforcement efforts would have somewhat smaller fleet sizes and the new registrants registering as a result of increased enforcement efforts would have larger fleet sizes.

Finally, FMCSA noted that, without any other changes, each fee would need to be adjusted to take into account the elimination of trailers from the definition of CMV, which reduces many carriers' fleets. As the Agency noted, "even with full compliance and no bracket shift, existing fees would be inadequate and would have to be increased to meet each State's revenue requirement" (74 FR 45592). Therefore, after factoring in compliance improvements and bracket shifting, FMCSA concluded that the 2009 fees must be increased by a factor of 2.22 to establish the fees for 2010 proposed in the NPRM. FMCSA concluded that those fees would provide the revenues to which the participating States are entitled. The Agency found that the proposed fees were based on a reasonable estimate of the number of active motor carriers subject to the UCR fees; reflected the statutory change in the definition of CMV; addressed bracket shifting; and set reasonable targets for compliance by the motor carrier industry to encourage enhanced enforcement efforts by the participating States (74 FR 45595). The proposed 2010 fees as shown in the NPRM are presented in Table 3.

[5] This weighted average projected compliance rate has been slightly adjusted for this final rule.

TABLE 3—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT PROPOSED FOR REGISTRATION YEAR 2010

Bracket	Number of CMVs owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$87	$87
B2	3–5	258	
B3	6–20	514	
B4	21–100	1,793	
B5	101–1,000	8,541	
B6	1,001 and above	83,412	

V. Discussion of Comments on the NPRM

The statute established a 90-day time period for FMCSA to set UCR fees and fee structure following receipt of a recommendation from the Board. Because of this statutory limit, FMCSA initially set the time period for public comment at 15 days, concluding on September 18, 2009. On September 18, the Agency published a notice extending the comment period for an additional 10 days, to September 28, 2009 (74 FR 47912).

A. Number and Description of Commenters

FMCSA received over 150 comments on the proposed rule from a wide variety of sources. Comments (including some filed late) were received from 114 industry members, nearly all of whom registered opposition to the proposed fees. In addition, 22 industry associations submitted comments. In general, they also opposed the fees proposed by FMCSA. Sixteen State agencies and two State associations commented, nearly all in support of the fee proposal.

B. Comments Favoring the Proposal

Comments

Fifteen State agencies, including the Alabama Public Service Commission, Colorado Public Utilities Commission, Illinois Commerce Commission, Kansas Corporation Commission, Kentucky Transportation Cabinet, Massachusetts Department of Public Utilities, Michigan Public Service Commission, Missouri Department of Transportation, New Mexico Public Regulation Commission, New York State Department of Transportation, North Dakota Department of Transportation, Oklahoma Corporation Commission, Pennsylvania Public Utility Commission, Washington Utilities and Transportation Commission, and the West Virginia Public Service Corporation, expressed strong support for the fee proposal in the NPRM. Many of the public agencies submitted essentially identical comments, stating that FMCSA had taken into account the three key points that needed to be addressed for a new fee structure: (1) The removal of towed units for purposes of determining fleet size, which by itself would require a fee increase by a factor of 1.61; (2) bracket shift, resulting in an approximately 26 percent decrease in revenues; and (3) the level of State enforcement efforts to address non-compliance. These commenters argued that "the net effect of 'bracket shift' and the exclusion of trailers have had a much greater impact on the need for a fee increase than has non-compliance." In addition, the Alabama Public Service Commission (Alabama PSC) commented that UCR collections and revenue had increased each year and, considering that the UCR program was only celebrating its second anniversary in September 2009, its progress to date had been "commendable."

Two associations, the National Conference of State Transportation Specialists (NCSTS) and the Commercial Vehicle Safety Alliance (CVSA), also supported the proposed fee structure. CVSA stated that the proposal represents the best method for reaching the goal of revenues equal to those received under the SSRS. CVSA noted that, despite the fee increase, the carriers in the top bracket would still pay far less than they would have paid under SSRS. CVSA also commented that the UCR program does not allow for a "revenue windfall," meaning that if revenues exceed the target, FMCSA would be obligated to adjust the fees downward for the following year. CVSA stressed that the new fee structure needed to be issued effective no later than November 15, 2009, to preclude additional shortfalls. Finally, CVSA commented that the fee structure for Registration Years 2008 and 2009 worked to the industry's benefit because the Board did not recommend a fee increase despite revenue shortfalls.

One motor carrier approved of the fee proposal because it would benefit owner-operators and small trucking companies, largely due to the statutory change in the CMV definition removing trailers for UCR registration and by applying a fee from a lower bracket, even with the increased fee from that bracket. Although they did not support the fee proposal, the American Trucking Associations (ATA) and the Transportation Intermediaries Association (TIA) both supported the State revenue entitlement submitted for FMCSA approval with the Board's recommendation. ATA also described FMCSA's use of MCMIS data to determine the overall motor carrier population as "unobjectionable" and added, "The underlying data may not be all it should be, but anyone working in this area must begin with it."

Response

FMCSA continues to agree that the statutory change in the definition of motor vehicle (a part of the population factor), bracket shifting, and the registration compliance rate (the enforcement factor) are essential factors to consider in the fee calculation methodology. FMCSA also agrees with ATA's comment that MCMIS data is the starting point for determining the appropriate carrier population. However, the Agency also understands the limitations to using MCMIS, which is a self-reporting system that was not designed for UCR purposes. (*See* Section V (C)(4) below for additional discussion.)

Finally, FMCSA also recognizes that those carriers that were subject to the SSRS program will generally pay less under the 2010 fee structure than they did under SSRS. More importantly, the UCR Plan cannot over-collect the fees. To the extent that it collects more than its target revenue amount, the fees

would be required to be reduced for 2011 to reflect the over-collection.

Consideration of Three Key Factors

Removal of Trailers From Fee Calculation

Comments

Many of the State agencies that supported the proposed fees filed an identically worded comment stating that because towed units are no longer part of the equation for purposes of determining fleet size, this factor alone would result in a need for the fees to increase by a factor of 1.61. The Missouri Department of Transportation (Missouri DOT) said that fee adjustment was necessary to account for the change in definition of CMV, noting that Missouri could expect a 38.7 percent decline in revenue collection from companies dropping into lower brackets as a result of the changed definition.

Many industry members acknowledged that it would be necessary to adjust the fee in response to the statutory change to the definition of CMV, but opposed any further adjustment. State commenters were generally opposed to this limited approach, arguing that it would cause a decrease in revenue.

Response

See Section V(C)(7) below for additional discussion.

Bracket Shift

Comments

State agencies and associations argued that it was necessary to account for bracket shift in developing the UCR fees because the statute allowed motor carriers to exclude from their count of vehicles subject to UCR fees those commercial vehicles not involved in interstate or international commerce and because UCR does not apply to certain vehicles below certain weight ratings. Thus, the net effect of motor carriers shifting upward or downward in brackets was roughly 26 percent less revenue than if the fleet size registered in MCMIS had been used to determine UCR fees. The Pennsylvania PUC said that self-certification by carriers will "inevitably result in bracket shift," and that FMCSA had properly included this factor in its fees calculation.

Response

FMCSA agrees that the net effect of bracket shifting has had a much greater effect on revenues than had been originally anticipated. By statute, motor carriers are allowed to exclude portions of their fleets from UCR registration. The inherent discrepancy between the number of vehicles in MCMIS and the number of CMVs that carriers may lawfully include in their fleet sizes for UCR purposes inevitably results in bracket shift independent of the fee calculation methodology used.

See Section V(C)(4) below for additional discussion.

Improved State Enforcement Efforts

Comments

Some State agencies commented that they have had to identify the universe of entities subject to the program and then to educate thousands of motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers that were not subject to the SSRS but are now subject to UCR fees. The commenters agreed that States will need to do more to improve overall compliance. They noted that, under the NPRM, approximately 66,000 additional entities will have to be registered into the UCR for 2010 to achieve the revenue goal, and that this will require States to improve compliance nationally by about 15 percentage points to reach the compliance goal of 86.42 percent. Several of the States, such as Illinois, Massachusetts, and Michigan also described increased enforcement and educational activities they have undertaken and the results they produced.

Response

FMCSA is encouraged to learn of the States' improved enforcement efforts. However, the Agency encourages more States to register entities for UCR at the same time as they renew registrations (including those for the International Registration Plan (IRP)), obtain International Fuel Tax Agreement (IFTA) credentials, and make excise tax filings. FMCSA urges States to work closely with FMCSA Division Offices to leverage pre-existing targeted enforcement efforts, as well as to improve data integrity issues, to make mass mailings and notifications more effective. Finally, FMCSA believes that the success of the UCR fee program depends on the Board working with States to develop outreach strategies and best practices for educating and registering carriers. (See the additional discussion in section V(C)(2)).

C. Comments Opposing the Proposal

Comments

Motor carriers and associations representing carriers submitted several comments that expressed general opposition to the fee proposal, based on a wide variety of arguments. The American Moving & Storage Association (AMSA) strongly opposed the fee proposal as "excessive, inappropriate [and] unwarranted." United Parcel Service (UPS) said the proposed fees represented an "unreasonable rate of increase." The Truckload Carriers Association (TCA) opposed the proposal because it would "negatively affect the motor carrier industry in order to subsidize both non-compliant motor carriers and the states that will not put forth the effort to increase UCRA [UCR Agreement] compliance." TIA called FMCSA's analysis flawed. ATA and TIA both faulted the NPRM for giving an impression of "illusory precision." They argued that "the unwarranted show of accuracy covers much guesswork and some arbitrary assumptions."

Response

As discussed in Section III above, the Agency has to recognize and implement its primary statutory mandate to enable States to achieve their revenue entitlement. Unfortunately, many of the comments expressing general opposition to the fee adjustment did not address the important issues. General statements of opposition do not present compelling arguments about the Agency's statutory mandate. Similarly, specific objections do not address the relevant statutory factors the Agency must consider. A more detailed discussion of those contentions and FMCSA's responses, follows below.

1. Increase Too Large Under Current Economic Conditions

Comments

One of the most common arguments against the proposed fees, made by over one hundred commenters, including many carriers, was that fees should not be increased because the trucking industry is suffering from the current economic downturn. Industry members commented that fee increases might force them to lay off drivers, sell trucks, or even go out of business. A number of associations and individual carriers complained that FMCSA failed to consider the condition of the economy and the "devastating effect" the fees increase would have on the trucking industry, trucking employment and services and even the survival of some trucking companies. AMSA commented that FMCSA had not appropriately considered the fact that household goods movers have faced a decline in both demand and revenue, forcing many such carriers to go out of business. Commenters also complained that shipping rates have declined significantly, putting additional economic pressure on the industry.

ATA and TIA commented that the recession has hit the trucking industry far worse than many other industries. ATA stated that for-hire truckload revenue has plummeted and that for-hire trucking employment is at its lowest level in 14 years. The California Trucking Association (CTA) also opposed the fee proposal, citing declining freight volumes, a number of recently adopted regulations affecting carriers in the State, higher diesel prices, and pressures to increase fuel taxes.

Response

FMCSA does not agree with the numerous commenters who asserted that the proposed rule represents too large an increase to be considered reasonable under current economic conditions. As discussed in Section III above, the statute does not permit FMCSA to consider as relevant in determining whether an adjustment in the UCR fees is "within a reasonable range," any factor that frustrates the primary purpose of providing sufficient revenues for the participating States. Current economic conditions are one such factor.

Nonetheless, FMCSA does not believe that the 2010 fees will have a significant economic impact on affected carriers.[6] In 2007, for example, the trucking industry generated revenue of $228,907 million. With an estimated inventory of 1,183,000 vehicles generating revenue, that total represents average revenue of $193,000 each.[7] Under the fees for Registration Years 2007–2009, in which the maximum fee per motor vehicle was $39, the fee accounted for no more than 0.02 percent (that is, 1/50th of 1%) of revenue. The 2010 fees (a maximum of $76 per power unit) represent less than about 0.04 percent (1/25th of 1%) of revenue per power unit. The increase in fees is thus only 0.02 percent of revenues—about a fifth of a tenth of 1 percent. This increase is very small even relative to the revenues of extremely small carriers.

Data on receipts for individual proprietorships in the North American Industry Classification System (NAICS 484—Truck Transportation)—which are assumed to represent the smallest carriers—show yearly revenue averaging $82,269.[8] The increase of $37 in the fee for one motor vehicle from $39 under the 2007–2009 fees to $76 for 2010 is an increase of only 0.045 percent, or little less than half of a tenth of one percent of the average individual proprietorship carriers' revenue. Moreover, the $37 difference between the 2009 and 2010 fees comes to less than 15 cents per day for a truck used 5 days a week for 50 weeks per year. Even if current revenue levels have been reduced by current economic conditions, the fee increase is very small in relation to such revenues.

A critical point that many commenters ignore is that a significant portion of the $37 fee increase in the first bracket is due solely to the change in the definition of a CMV. That change alone requires an increase of about 62 percent, or $24. The remainder, which is only $13, is less than a hundredth of 1 percent of industry average revenue per power unit, two-hundredth of 1 percent of the average revenues of an individual proprietorship, or 5 cents per power unit per day. For the largest carriers this increase has an even lower per-unit effect.

2. State Compliance and Enforcement

a. Responses to NPRM Questions on Compliance

Question One: FMCSA requested public comment on the reasons for the low level of compliance.

Comments

The Alaska Trucking Association noted that, according to FMCSA, only 28 out of 41 participating States actively engage in roadside enforcement. The commenter expressed doubt that there is any enforcement in the 10 non-participating States. Since there is no incentive for non-participating States to conduct UCR enforcement, the commenter concluded there is unlikely to be any enforcement in the future in those States. Therefore, the reason for the current low level of compliance is that "if there is no reasonable expectation of getting caught, there is no incentive to comply."

The Alabama PSC supported the 90 percent registration compliance factor and noted that ATA had erroneously stated it in its comments as 80 percent. It said that it had made progress working with FMCSA to improve the data on potential registrants, but work still remained to be done. It is unreasonable, Alabama PSC argued, to expect the States to achieve 100 percent compliance when the Federal data upon which they rely are not 100 percent reliable. Alabama PSC would support a higher registration compliance factor for non-participating States than the 59 percent proposed by FMCSA, noting that four of the nine non-participating jurisdictions in the continental U.S. had already achieved this level of registration for 2009 (VT, NJ, OR, and AZ). Alabama PSC suggested a factor of 65 to 75 percent.

The Pennsylvania PUC stated that it believes the current compliance rate is a reflection of various factors, including a potentially inaccurate carrier population number, the ability of property carriers to omit vehicles used solely in intrastate commerce, as well as available enforcement and compliance tools. Pennsylvania agreed with FMCSA that the compliance rate is higher for larger carriers.

California Department of Motor Vehicles (California DMV) noted that UCR does not require State participation. Participating States retain only that amount of the collected UCR fees that equals what they previously collected under SSRS. Thus, California collected its entitlements in both 2008 and 2009 and sent $300,000 each year to the UCR repository for distribution to other States. Because, according to California DMV, UCR prohibits the States from collecting any intrastate fees from a carrier that pays UCR fees, California would lose over $7 million in intrastate revenues if California pursued all UCR-defined interstate carriers. This dynamic occurs for any State that exceeds its UCR revenue cap or collects intrastate fees. Another reason for non-compliance, California DMV explained, is that "carriers do not know they are non-compliant because they think they are *intra*state. A massive compliance effort would be required to pursue and convince these carriers to pay with little incentive for the States to do so because of their capped revenue amounts and their loss of intrastate fees when the carriers do pay UCR."

California DMV also noted that before UCR was enacted carriers could enter information into MCMIS without fear of consequences, since no credentials or payments were linked to MCMIS filing with respect to numbers of vehicles and whether or not a carrier was interstate. Finally, California DMV pointed to the weak compliance efforts of non-participating States, which may enforce on carriers crossing into their States, but do little to enforce on any of their own intrastate carriers who meet the UCR definition of interstate.

The Missouri DOT also said it had identified a number of companies within the non-compliant group that were operating only within the State borders in intrastate commerce, out of business, not currently operating, non-compliant in one or more State motor

[6] In the Regulatory Analysis and Notices section below, FMCSA complies with applicable regulatory policies to determine that this final rule is not economically significant. That determination rests on a different standard than the statutory factors discussed in this section.

[7] *http://www.census.gov/svsd/www/services/sas/sas_data/48/2007_NAICS48.xls.*

[8] *http://www.census.gov/econ/nonemployer/index.html.*

programs (IFTA, IRP, Over Size/Over Weight (OSOW), Operating Authority), or placed out-of-service. However, getting these changes into the MCMIS system is difficult and sometimes impossible. If Missouri could exclude these companies the State's compliance rate would be 87.5 percent.

CVSA cited two reasons for the expected revenue shortfall, the prospective change in definition of CMV and bracket shift, and argued that lack of enforcement by the States was not a major cause of the shortfall. CVSA contended that the States have stepped up efforts to enforce the program; and, as of September 2009, the compliance rate had reached 72 percent. CVSA noted that early in the program's life an outreach effort was necessary to inform carriers that were not required to pay under SSRS that they were covered by UCR. In addition, CVSA said it was important to note that UCR does not have an enforcement mandate and as a result no nationwide enforcement standard has been promulgated in rulemaking. In addition, there is no statutory requirement for a UCR credential to be carried on board trucks. CVSA also noted that inaccurate information in the carrier population database had impeded collection efforts. Lists of carriers obtained from MCMIS were not current and in some cases led to a 25 percent or greater return rate for registration fee notices. States have had to purge the lists of carriers that no longer exist.

Several other comments addressed compliance and how to improve it. One pointed out that Connecticut and New Hampshire are requiring proof of UCR compliance to renew a registration or obtain IFTA credentials.

Response

FMCSA specifically takes issue with California DMV's assertion that it has a net loss of $5 million because UCR prohibits the States from collecting any intrastate fees from a carrier that pays UCR fees. In FMCSA's view, this loss of revenue occurs because of the stand-alone preemption provisions of 49 U.S.C. 14504a(c) that are not linked to registration and payment of fees to the UCR Plan and Agreement. In other words, section 14504a(c)(1) precludes any State requirement for payment by interstate motor carriers and interstate motor private carriers (as defined there) of any of the fees there specified. It seems that California would lose these revenues regardless of the payment by those carriers of UCR fees; otherwise, California could rectify this situation by withdrawing from the UCR Plan under 49 U.S.C. 14504a(e)(3) and (4), which it obviously has not done. Other issues raised by the commenters are addressed in sections V(C)(4), V(C)(5), V(C)(6) and V(C)(7).

Question Two: FMCSA requested public comment on determining the reasonableness of the States' enforcement efforts.

Comments

The Alaska Trucking Association stated that "at the least" a participating State should demonstrate an ongoing effort to register and collect fees, both administratively and through enforcement. The commenter also said that non-participating States need to have some incentive to perform enforcement.

Several States described their current efforts to improve enforcement. They included assisting each other to reach the collective registration compliance goals by developing a communication system to alert each State of new concerns and sharing "best practices." The Illinois Commerce Commission noted that the State had fulfilled its commitments in the UCR State Participation Agreement, registering 17,523 carriers and achieving a 90 percent registration percentage of all "UCR universe" carriers in Federal database records, and issuing over 1,000 citations in the past 12 months. Massachusetts reported that for the past 3 years it had conducted focused enforcement events with the Massachusetts State Police, and had worked with FMCSA on data integrity issues. The Pennsylvania PUC argued that any attempt to increase the compliance rate should recognize the economic realities of enforcement among the small fleet carrier population.

California DMV recommended three actions that would require a legislative change to the UCR Agreement. It also suggested a fourth, altering the definition of "interstate carrier" to match the IRP definition (which it believed would not require a statutory change) and using the IRP database to calculate the UCR fee structure.

Missouri argued that using a compliance rate based on the number of companies registered is not the correct compliance tool to use. Missouri's current 79.6 percent compliance rate accomplishes a collection rate of 90.7 percent of the fees that the State believes should be collected under the program in the State. In addition, 54 percent of Missouri's non-filers are in bracket 1 or bracket 2. Without a change in the compliance measure, the State could be required to spend more in resources to collect a small amount of revenue.

Kentucky noted that the State had 82 percent compliance for 2008 and 87.98 percent compliance for 2009. However, over the past 3 years, Kentucky had a shortfall of approximately $11 million due to the new UCR program and the need to educate motor carriers about the new registration program.

Response

FMCSA notes that State agencies generally support the proposed compliance rates. However, some expressed concern that the lower rate of 59 percent compliance for non-participating States would not be adequate and would favor an increase.

FMCSA agrees with State comments that the difficulty in obtaining UCR compliance is a reflection of various factors, such as the ability of carriers to omit CMVs for various reasons, lack of a requirement for States to participate in UCR, the difficulty of obtaining compliance from non-participating States, and the lack of a requirement for the UCR entity to carry a credential. Absent statutory changes that would address these issues, FMCSA believes that compliance by carriers from non-participating States will continue to be problematic and, therefore, the Agency is not increasing its estimate of the non-participating State compliance rate.

b. Comments on Inadequate State Compliance and Enforcement Efforts

Comments

A number of commenters opposed increasing UCR registration fees, alleging that the States have not undertaken adequate enforcement measures to ensure compliance. A number of commenters stated that fees should be raised only after the States have achieved adequate compliance. ATA and TIA commented that neither FMCSA nor NCSTS has recognized how significantly non-compliance has contributed to revenue shortfalls, alleging that 19 participating States have not registered at least three-quarters of the carriers based within their borders. ATA and TIA further commented that non-compliance or evasion is likely a major cause of bracket shift, but because States have not performed any audits, it is unclear. Another commenter said that FMCSA had erred in treating bracket shift and non-compliance as separate subjects. The commenter argued that enforcement of accurate carrier registration would have a significant impact on the amount of fees collected.

ATA and TIA said that FMCSA had set an arbitrary and capricious standard

for State enforcement efforts in developing the proposed fees. ATA and TIA said that FMCSA made "a great show" of including a compliance factor, but this must be discounted heavily because the fees proposed by the NPRM are almost exactly the same as those recommended to the Secretary in February, 2009. The TCA argued that, although 100 percent compliance was unlikely, it should be the goal of the program and that there should be no increase until the States make a good faith effort to register non-compliant entities.

One commenter urged greater emphasis on ticketing or fining non-compliant carriers when discovered in roadside or scale inspections. Another said that UCR registration should be made part of the annual vehicle registration, like the Heavy Vehicle Use Tax, and should require proof of compliance before the vehicle can be registered.

The National Private Truck Council (NPTC) and the Truck Renting and Leasing Association (TRALA) faulted the Board and FMCSA for not developing audit procedures. The Louisiana Motor Transport Association (LMTA) complained that States were not required to demonstrate that they could effectively and efficiently administer the program as a condition of participation. LMTA suggested that States must first make all efforts to collect outstanding revenue prior to requesting an increase in fees. The Specialized Carriers & Rigging Association (SC&RA) also commented that the States have not done a good job of enforcement, with 19 of the UCR States and all 12 of the non-participating States failing to require registration and payment of the fees.

Response

FMCSA agrees that State enforcement activities, and the levels of compliance with UCR registration requirements by the motor carrier industry, directly affect the States' revenue, and are therefore relevant factors for consideration. The Agency's proposal, as set out in the NPRM, clearly expects an increase in the level of enforcement in order to produce an increase in compliance (74 FR at 45592–93). The Agency recognizes that participating States have made improvements in collection rates as enforcement activity has increased. Based on the State reports at the Board meetings and data available in MCMIS, FMCSA believes that the States have been making a "good faith effort" to address compliance and enforcement issues. The most recent data from MCMIS show that for the first 10 months of 2009, 42 States have issued 21,223 citations to motor carrier entities for not registering with the UCR Plan. This is a significant improvement over the 7,995 citations issued by 33 States during the entire previous year of 2008. This is clear evidence of an increased level of enforcement activity by the States, and compliance by motor carrier entities has improved accordingly.

However, the data also show some disparity in the level of activity by the various States, including a few participating States that are apparently not issuing roadside citations to unregistered motor carriers and other entities. For that reason, the Agency's fee proposal reflects an expectation that the participating States as a whole will need to register 90 percent (not 80 percent, as incorrectly stated by ATA) of the entities required to register in those States in order for the revenue entitlements to be achieved. To meet that level, FMCSA believes that all of the participating States must, and will, increase enforcement activities. This includes roadside enforcement and audits, as well as outreach activity with the essential support of the industry, to make sure that all motor carrier entities subject to the UCR registration requirements are aware of and comply with them.

The situation in the non-participating States, however, is more complex. As indicated in the NPRM, those 10 States cannot receive revenues from the UCR Plan and thus have no apparent financial incentive to conduct enforcement within their jurisdictions.[9] Several commenters urged the UCR Plan and FMCSA to take steps to improve compliance by motor carrier entities in the non-participating States.

FMCSA has no direct authority to enforce UCR compliance, and participating States are limited in their ability to enforce against carriers based in non-participating jurisdictions.[10] That said, increasing roadside enforcement efforts (as described above) should improve compliance by motor carriers and other entities from non-participating States. Regardless, this only captures those carriers that operate CMVs into participating States. Participating States are very limited in their ability to capture interstate carriers based in non-participating States that do not carry property or passengers into a participating State. As CVSA noted in its comments, industry cooperation, such as publication of information in the trade press about UCR, is vital to the success of the UCR program, and could assist in increasing compliance by entities in the non-participating States. The 2010 fee structure adopted here requires participating States to increase compliance rates for motor carrier entities based in non-participating States in order to achieve the revenue entitlements. Nonetheless, two factors must be addressed (the change in definition of vehicle and bracket shift) that are and will be the primary reasons for UCR Agreement revenue shortfalls, and not lack of compliance.

3. Increased Fees Should Not Fall on Compliant Entities/Fees Unfair

Comments

Many commenters, including numerous individuals and carriers, stated that raising the fees as proposed is unfair because it increases the burden on compliant carriers to the non-compliant carriers' benefit. The Minnesota Trucking Association commented that increasing fees only for the compliant carriers raised basic questions of fairness and not only rewards bad behavior, but also creates a competitive advantage for the offenders in terms of liquidity and cash flow. Some commenters stated that companies that are not complying with the UCR are using the money saved to help maintain positive cash flow, while those in compliance are suffering. The California DMV commented that the fees must apply to all with a reasonable expectation of compliance. ATA and TIA said that the failure of the States to enforce UCR Agreement requirements is the major reason for its opposition to the proposed fee increases. The absence of serious State enforcement efforts, in particular the lack of State audits of UCR Agreement compliance, calls into serious question FMCSA's asserted basis for the increases. The Alaska Trucking Association commented that, by accepting the premise that it was "unreasonable to expect the States to register and collect fees from all potential registrants," both the Board and FMCSA have endorsed a fundamentally unfair fee structure that

[9] Data available to FMCSA from MCMIS, if correct, shows that a few non-participating States are issuing a very small number of citations and, presumably, collecting fines for not registering with the UCR Plan, even though it is not entirely clear that non-participating States have authority to issue them. *Cf.* 49 U.S.C. 14504a(i)(4).

[10] Hawaii is one of the ten non-participating States. However, section 701(d)(1)(C) of the Rail Safety Improvement Act of 2008, Public Law 110–432, Div. A, 122 Stat. 4848, 4906 (Oct. 16, 2008) amended the statute so that Hawaiian motor carriers not transporting household goods (which number only a few hundred) are not required to register with the UCR Plan. 49 U.S.C. 13504 and 14504a(a)(5)(A)(ii). This will further reduce the number of entities from non-participating States that will register.

will cause more and more potential registrants to become non-compliant. The Alaska Trucking Association recommended no fee increase until the States make a solid commitment to enforce registration and the payment of fees. Similar arguments were made by the Snack Foods Association and AMSA, which expressed concern that the unprecedented large increase in fees will result in increased non-compliance.

Some commenters, in addition to those who stressed the unfairness of assessing fees against the compliant carriers to the benefit of the noncompliant carriers, raised other fairness issues. One truck operator argued he should not be required to pay higher fees because trailers were no longer counted toward the fees assessed other companies. Another said that removing the fees for trailers is not a tradeoff and that smaller carriers will end up paying more than twice as much. The American Bus Association disagreed with FMCSA that the proposal in the NPRM is a compromise fair to all parties. The doubling of fees, by itself, makes the proposal unfair, but the disproportionate effect on the compliant carriers also makes it unjust.

Two California truckers noted that none of California's neighboring States participate in the UCR program and that no agency in those States enforces enrollment by interstate truckers, placing California carriers at a competitive disadvantage. Additional fee increases will only increase this disadvantage, they said. One of these commenters also noted that because California already recoups its UCR Agreement entitlement, all additional fees received are distributed to States with shortfalls and do not benefit California carriers. The CTA echoed comments critical of California's participation in the program, arguing that States meeting revenue goals should not be punished. The CTA commented that California carriers would experience a net loss from the fees proposed due to potential job losses and a decrease in freight movement. Any increase of UCR fees "to account for other states' safety program funding shortfall adds another layer to an already unlevel playing field."

The comments from the States indicated that compliance has been increasing as enforcement activity has increased. NCSTS, joined by several participating States, reported that registration for 2009 had increased to 307,767 carriers. Alabama PSC claimed that 2009 registrations had increased to "over 310,000." In addition, the Pennsylvania PUC and Missouri DOT both noted that FMCSA was correct that the compliance rate (calculated as the number of carriers registered under the UCR plan divided by the total number of carriers that should potentially register) is not synonymous with the actual revenue collection rate (calculated as the actual revenue collected divided by the targeted revenue amount). The FMCSA's Registration Percentage Reasonableness (RPR) factor is a reasonable compliance target, Pennsylvania stated; and FMCSA "reasonably approximated the effect of the increased compliance goal on targeted revenue."

Response

FMCSA does not agree that the 2010 fee structure unfairly burdens compliant carriers. In developing the fees proposed in the NPRM, FMCSA determined that the levels of both State enforcement and carrier compliance are relevant factors to consider because they directly affect States' ability to achieve their revenue entitlement. Although the Board's recommended fees were based on the population of previously compliant carriers, FMCSA specifically rejected this approach. Under the 2010 fee structure FMCSA proposed, the Plan will not reach the overall revenue target unless the States improve compliance by increasing enforcement efforts and registering a significantly greater number of unregistered carriers.

Furthermore, the data show that compliance has improved with each year that the UCR Agreement has been in effect, as shown in Table 2 in the NPRM (74 FR 45586). New data made available to the Agency since the NRPM was published show that registrations have increased to 276,286 carriers for 2007, 299,908 carriers for 2008, and 314,456 carriers for 2009, all improvements over the registration levels shown in Table 2 of the NPRM. Recent enforcement activity has apparently captured entities that should have registered in previous years as well as the current year. More recent data also show a clear improvement in compliance rates. Compliance rates for 2008 registrations in both participating and nonparticipating States, as of March and September 2009, are shown in the table below.

TABLE 4—UCR REGISTRATION COMPLIANCE RATES—2008 REGISTRATION YEAR

	As of March 2009	As of September 2009
Non-Participating States	40.45%	42.22%

TABLE 4—UCR REGISTRATION COMPLIANCE RATES—2008 REGISTRATION YEAR—Continued

	As of March 2009	As of September 2009
Participating States	66.28%	74.14%
All States	62.51%	69.48%

Registration totals for both categories of all States and all participating States include registrations by Canadian and Mexican carriers.

Although these data show a continued increase in compliance with UCR registration requirements by the motor carrier industry, further improvement is essential to address the fairness concerns of the commenters. As proposed in the NPRM, the 2010 fee structure depends on the States registering 374,200 motor carrier entities to achieve the required revenue levels under the statute (see Table 13, 74 FR 45593). As adjusted below, the States will need to register 370,664 entities or a weighted average of 85.50 percent in all States (including Canadian and Mexican carriers) in order to achieve the revenue levels expected. In FMCSA's view, a fee structure based on compliance rates of 90 percent in the participating States and 59 percent in the non-participating States is aggressive but fair and balanced.

In any case, lack of enforcement is not the sole reason the participating States have failed to achieve their revenue entitlements. As explained in the NPRM, the Agency believes that the most significant cause of past revenue shortfalls is bracket shifting. This means that even if the States achieved 100 percent compliance at 2009 fee levels, they would nonetheless experience a revenue shortfall warranting a fee adjustment.

4. FMCSA's Analysis of Bracket Shifting Inadequate

Comments

Many industry commenters disagreed with FMCSA's treatment of bracket shifting. Most of the comments echoed objections ATA articulated in its comments. ATA identified what it believed are the five causes of bracket shifting:

1. The MCMIS data on a carrier may be erroneous, and the carrier legitimately pays fees at a level different than the recorded data would predict;

2. The carrier chooses under the Act to base its fee calculation on the actual number of vehicles it operated during the preceding year instead of the

number it reported to FMCSA, and therefore falls into a different bracket;

3. The carrier operates some of its vehicles solely in intrastate commerce, excludes these from its fleet count, as is permitted by the Act, and pays less than expected;

4. The carrier is legitimately confused about the requirements of the Act, and excludes trailing equipment or equipment operated in interstate commerce but solely within a single state; and

5. The carrier cheats, and knowingly pays less than it owes.

According to ATA, the fourth and fifth causes of bracket shift listed above reflect noncompliance and are very likely major causes of the States' revenue shortfalls. However, ATA acknowledges that it is currently impossible to know what proportion of the reported 25 percent revenue loss constitutes non-compliance, because no States have yet performed any audits. ATA also criticized FMCSA's "unquestioning acceptance" of the analysis of bracket shift made available to the Board and said that the Agency should not accept this "superficial" analysis without some verification.

ATA also pointed out that inclusion of trailers and other towed vehicles in the UCR program led to a great deal of confusion on the part of motor carriers when they had to calculate the size of their fleets, and led many to underpay by mistake what they owed. ATA stated that this aspect of the administration of the program should not be ignored.

Several commenters agreed with FMCSA that bracket shifting is a significant contributor to revenue shortfalls, but disagreed that it was appropriate to adjust the fees to compensate for it. The Snack Food Association commented that MCMIS data do not always predict actual registrations and that a large number of carriers are intentionally under-reporting their fleet sizes.

UPS expressed concern at "the almost total absence of any type of review of the appropriateness of" bracket shifting. UPS also commented that bracket shifting may be due to the fact that many industry members do not understand that the definition of interstate transportation for UCR registration purposes is "significantly different than the interpretation in most states which hold that the vehicle not the cargo or passengers must cross state lines." As a result, UPS strongly disagrees with FMCSA's (and most States') acceptance of self-reported figures.

Alabama PSC challenged ATA's suggestion that bracket shift could be the result of mistake or fraud, stating that Alabama's initial efforts at auditing carriers had uncovered "no evidence of fraud or mistake." Alabama PSC also challenged ATA's claim that the States had not yet performed any audits of bracket shifting, noting that ATA and other industry representatives voted against a recent Board resolution requiring carriers that remove vehicles from their fleet count to maintain a vehicle-specific list so that States may conduct accurate audits of bracket shifting. Alabama PSC concluded that the vast majority of bracket shifting appears to be legitimate and that it would be unreasonable not to include it as a factor in the 2010 fees, with a reasonable adjustment to the factor to account for mistake or fraud.

Some commenters criticized the use of FMCSA's MCMIS data base as the source of the carrier population, stating that faulty data are one potential cause of bracket shifting. The TRLA and the NPTC both said that MCMIS is "fundamentally flawed" because there is no mechanism for purging the system of entities that have gone out of business, merged, consolidated, filed bankruptcy, or simply disappeared from regulatory oversight. They, along with other commenters, also faulted FMCSA for having no systematic mechanism for verifying and correcting the data submitted by the registrants, although they acknowledged the efforts of some States to clean up MCMIS data. RTLA and NPTC said that data quality issues have made it "problematic at best" to determine an appropriate fee schedule that would generate the amount of revenue allowed by the UCR Act. The California DMV commented "the MCMIS data is not a good benchmark to calculate the UCR fees." Finally, a carrier commented that the States should be provided accurate information of the number of interstate carriers from their State and then be required to obtain compliance of at least 90 percent if they are to participate.

Response

FMCSA believes that bracket shifting has been a significant factor in causing the overall revenue shortfall. As explained in the NPRM, bracket shifting has caused a significant portion of the revenue shortfall in Registration Years 2007–2009. The shortfalls have occurred because motor carriers are not always required to use the number of CMVs reported to FMCSA and incorporated into MCMIS as the number of CMVs used to determine the applicable fee for UCR registration (74 FR 45589–90).

Only the participating States have access to the underlying data on revenue yields by bracket used to develop the analysis presented to the Board and utilized by FMCSA in developing the fees; FMCSA does not. No industry representative on the Board challenged the accuracy of the data on the revenue effect of bracket shifting shown in Table 8 in the NPRM when it was presented at Board meetings earlier this year.

The data from MCMIS, despite apparent inadequacies, are the only data source available for developing the UCR fees and fee structure. As even ATA acknowledged: "The agency's analysis of the overall motor carrier population is unobjectionable. The underlying data may not be all it should be, but anyone working in this area must begin with it." The MCMIS data base was not designed for and was not intended for use as a source for designing and then collecting the fees for the UCR Plan and Agreement. Nonetheless, FMCSA has made the data available for use by the UCR Plan and the participating States, at their request, because, as ATA points out, it is probably the best source that is available. The implementation of the UCR Plan and Agreement has had the benefit (along with other considerations) of leading FMCSA to implement procedures to improve the accuracy, reliability and timeliness of the motor carrier data in MCMIS. A few commenters also noted that the reliability of the MCMIS data used in the implementation and administration of the UCR Plan's registration has improved over time.

Nonetheless, the motor carrier information contained in MCMIS, as self-reported by carriers filing and updating information on a form MCS–150, is not the sole basis under the statute for determining the appropriate fees to be paid by a carrier registering with the UCR Plan. As explained in detail in the NPRM, the statute permits carriers to register under a different fleet size than that which is reported in MCMIS (74 FR 45589–90).

Generally FMCSA agrees with ATA and other commenters that there are a number of reasons for bracket shifting, some lawful and some not. However, ATA did not identify all of the legitimate reasons for which a motor carrier may shift to a bracket different than that indicated by the MCMIS database. For example, motor carriers may also exclude from their fleets vehicles under lease for terms of 30 days or less. Moreover, motor carriers may add CMVs to their fleets for the purpose of UCR registration, and, as indicated in the NPRM, hundreds of carriers apparently did so.

FMCSA agrees that many motor carriers subject to the UCR Plan and Agreement do not fully understand their rights and responsibilities with respect to fees. Comments indicate that some motor carriers may not understand that there are legitimate reasons for adjusting the number of vehicles in their fleets for the purpose of registering with the UCR Plan. One motor carrier, for example, complained about having to pay a fee based on 148 power units when only 28 were used in interstate movements, while the rest were used to transport seasonal agricultural products within California. By statute, this carrier "may elect not to include commercial motor vehicles used exclusively in the intrastate transportation of property * * *" (49 U.S.C. 14504a(f)(3)). This commenter did not explain why it would not make such an election, which would reduce its fee from $8,541 to $1,793 under the proposal in the NPRM. Nevertheless, this is but one example of the many legitimate opportunities for a carrier to shift to a different UCR fee bracket.

ATA does not support with any evidence its statement that registrations with improper bracket shifting "are very likely major causes of the states' revenue shortfalls." On the other hand, the Alabama PSC reports in its comments that: "Alabama's initial efforts at auditing carriers have uncovered no evidence of fraud or mistake." ATA also implies that the change removing towed vehicles from the CMV definition will reduce the amount of bracket shifting.

On the other hand, as the example discussed above shows, there are still numerous situations that would allow a motor carrier to adjust its fleet size for UCR registration purposes, even when only power units are considered. FMCSA agrees that the removal of trailers and other towed vehicles from the definition of commercial motor vehicles for the purpose of determining the number of such vehicles owned and operated may lessen, but will not eliminate, bracket shifting. As indicated in the NPRM, and in the discussion above, there are numerous legitimate grounds for a registering motor carrier or freight forwarder to rely on in making such adjustments. Therefore, in the Agency's judgment, it would be reasonable to incorporate into the adjustment of the fees for 2010 an estimate that bracket shifting will produce a reduction of 15% in the revenues that would be expected from the number of CMVs reflected in the MCMIS data base. This is a change from the estimated revenue reduction of approximately 25% used in the NPRM. If industry's supposition that bracket shifting will diminish with the removal of towed CMVs from the fleets proves to be true to such an extent that revenues collected under the UCR Plan and Agreement, despite FMCSA's estimate that revenue loss due to bracket shifting will fall to 15%, the statute requires the Board and FMCSA to reduce the fees accordingly in the following year (49 U.S.C. 14504a(h)(4)).

5. Compliance Rates Likely To Decline

Comments

Some commenters, including ATA and TIA, argued that sharply increased UCR Agreement fees would increase noncompliance, creating a future spiral of State revenue shortfalls and requests for yet higher fees. The Snack Food Association said that placing almost the entire burden of a solution on compliant carriers was unfair and that it was likely that a fee increase of this magnitude would decrease compliance rates.

Response

FMCSA has no evidence to conclude that this final rule will increase non-compliance and create future spirals of revenue shortfalls and increased fees. State revenue collection for Registration Year 2010 will depend not only on the fees published in this final rule, but also on States increasing their enforcement efforts. Given the incentive for greater enforcement built into this rule, there is no basis to conclude that higher fees will result in greater non-compliance. In fact, the opposite is true. States have every incentive to improve enforcement so that they can achieve the full amounts to which they are entitled. Finally, the Agency will be observing the Board's and the States' enforcement and audit activities closely. Future State revenue shortfalls do not in and of themselves guarantee fee increases.

6. Problem of Moral Hazard/Self-Fulfilling Prophecy

Comments

ATA, TIA, and YRC Worldwide commented that, by mirroring the Board's proposal, FMCSA's proposal would create a moral hazard by signaling to States that they do not need to exert any enforcement efforts. UPS disagreed with FMCSA's division of the discussion of enforcement into participating and non-participating States. According to UPS, because UCR is a safety program, enforcement should not be optional for States. UPS also commented that revenue should not be the incentive for safety enforcement. UPS has very serious concerns about allowing any State or group of States the option of selectively enforcing Federal law. According to UPS, non-participating States should not be allowed to use the lack of revenue as an excuse for not enforcing the program.

UPS argued in favor of using the total population, without any reductions, as the basis for the fee calculation. That a significant number have not registered "is not a justification for accepting this non-compliance," in UPS' opinion, and "is evidence of the lack of effective enforcement of the UCR by the states."

Response

FMCSA disagrees that the final rule will create a moral hazard or other incentive for States not to enforce the UCR program against eligible entities.

Despite characterizations to the contrary, FMCSA's proposal does not mirror or substantially adopt the Board's proposal. FMCSA did not believe that the Board's proposal took into account the need for increased State enforcement efforts, among other things. As a result, FMCSA proposed a different fee structure that factored in an average compliance rate of 86.4 percent, which has been slightly adjusted to 85.5 percent in this final rule. This is a significant increase over the compliance rate for registration years 2007—2009, as well as the compliance rate incorporated into the Board's April 3, 2009, proposal. FMCSA believes that the fee structure incorporated in this final rule sets realistic compliance goals that require States to improve their enforcement efforts in order to reach the statutory entitlement amounts.

As explained above, the statute only authorizes FMCSA to set fees. Clearly, FMCSA can create incentives for enforcement, as it has in this final rule, by setting fees that require increased enforcement efforts in order for participating States to reach their entitlement levels.

FMCSA believes that participating States can improve the number of registrations by targeting carriers through roadside enforcement efforts, especially at State border crossings, and mailing campaigns. Still, FMCSA recognizes that participating States' opportunities for extra-jurisdictional enforcement are inherently limited. A number of carriers transporting goods or people in interstate commerce might never leave their home States. There is very little that participating States can do in these circumstances, except undertaking outreach efforts. FMCSA has attempted to balance the realities of these limitations with its statutory directive to set fees so that States receive their entitlement revenue amounts.

7. Fee Increase in Response to Change to CMV Definition

Comments

A minority of commenters from industry and a few industry associations opposed any increase in the fees, even that portion of the increase required to reflect the change in the statute defining "commercial motor vehicle" for UCR purposes beginning in 2010. However, a substantial proportion of the motor carrier commenters, following the lead of ATA, and all of the comments on behalf of State interests, agreed that some increase in the fees is necessary because of that statutory change. Two commenters stated that the industry understands that a fee adjustment is necessary to accommodate the elimination of trailers from the fee calculation, and that "Table 4 in the NPRM would be acceptable to most in the trucking industry." Several trucking associations also stated that they would accept the fees in Table 4 of the NPRM that reflected only the change in the definition. ATA and TIA also commented that the exclusion of towed units from the definition of CMV should eliminate some confusion among motor carriers and result in some revenue gain.

Response

FMCSA does not agree that the 2010 fee adjustment should take into account only the statutory change to the definition of CMV. As explained previously, the statute requires FMCSA to set the fees at a level that will provide the States their revenue entitlements. In order to discharge its statutory duties, FMCSA must also take into account the realities of bracket shifting and a reasonable compliance rate. These two factors, especially bracket shifting, have been, in FMCSA's view, the cause of the revenue shortfalls, and must be taken into account as well in setting the fees for 2010. A fee level that only takes into account the statutory change would not enable the participating States to reach their statutorily mandated revenues.

8. Other Arguments Against Fee Proposals

a. FMCSA Did Not Balance All Factors Appropriately

Comments

ATA and TIA commented that by not granting the Board sole discretion to set fees, Federal law implies that FMCSA is to exercise some discretion and balance the interests of the participating States with the interests of the industry members. ATA and TIA argued that there is no indication in the NPRM that the Agency has done this.

Response

Although many commenters contend that FMCSA has an implied duty to balance State and industry interests, none have cited legal authority to support this position. In many respects, the specific language of the statute restricts, rather than expands, the Agency's discretion. As explained above, FMCSA may balance State and industry interests only to the extent that doing so does not frustrate its statutory obligation to set fees that enable States to achieve their revenue entitlements. (See Section III, above.)

b. Eliminate Administrative Costs and Reserve From the Calculation

Comments

Alaska Trucking Association objected to including $5 million for administrative expenses under the current economic conditions. An individual trucker echoed this objection. ATA and TIA objected to including both $5 million for administrative expenses and the $563,885 revenue reserve. ATA said that the reserve fund request is unsupported by statute, and the concept "belies the assumed precision that underlies the rest of the fee proposal." Minnesota Trucking Association commented that there is no economic justification for including administrative expenses and a revenue reserve.

Response

FMCSA disagrees with the commenters who contend that including administrative costs in the fee calculation is inappropriate. In setting the fees, the statute directs FMCSA to consider administrative costs associated with the UCR Plan and Agreement (49 U.S.C. 14504a(d)(7)(A)(i)). Considering this statutory obligation, FMCSA believes it is not only reasonable, but imperative, to include these costs in the fee calculation. The amount of the estimated administrative costs was approved by the UCR Plan's board of directors, and FMCSA does not see any basis for rejecting that recommendation.

Although FMCSA is not statutorily obligated to include a revenue reserve in the fee calculation, the Agency nonetheless believes it is within its discretion to include this amount if it is necessary to fulfill its statutory obligations. This amount was designed to account for any uncertainties involved in the fee calculation to ensure that the States are able to achieve their entitlement revenue levels. In fact, FMCSA included a 0.5 percent revenue reserve as a component of the fees for Registration Years 2007–2009 without receiving any negative comments.

Nonetheless, FMCSA has decided to remove the revenue reserve component from the fee calculations in the final rule. After 3 years of experience administering the fees, FMCSA believes that the initial uncertainties prompting inclusion of a revenue reserve have diminished. Both FMCSA and the Plan have a greater understanding of the factors that have caused under-collection (such as population definition, compliance rates and bracket shifting) and have adjusted the final rule accordingly. As a result, the Plan should face significantly less uncertainty, negating the need for the revenue reserve. This final rule removes the revenue reserve from the amount of the total revenue entitlement, which has been adjusted to $112,777,060 from the $113,340,945 proposed in the NPRM (74 FR 45588).

c. "Reasonable" Fee Required by Statute

Comments

Several trucking associations and carriers, citing 49 U.S.C. 14504a(f)(1)(E), argued that the law requires UCR fees to be adjusted "within a reasonable range" and that the proposed increase is not "reasonable." These commenters included ATA, TIA, UPS, the American Bus Association, the Snack Food Association, the United Motorcoach Association, and National Tank Truck Carriers. Some asserted that, given the state of the economy, the increase proposed by the NPRM is not reasonable; others pointed to the size of the proposed increase as unreasonable. The TRLA and the NPTC also opposed the proposed fees as unreasonable and in violation of § 14504a(e)(1)(B). In addition, they argued that the State recipients of UCR fee revenues have not demonstrated that they are in compliance with the requirement in the UCR Act that they use an amount equivalent to the UCR revenues on motor carrier safety programs, enforcement, or administration of the UCR program, citing § 14504a(e)(1)(B). The NPTC added that private motor carriers did not pay into the SSRS, but they agreed to pay UCR fees on the grounds that the revenue would be used solely for motor carrier safety enforcement. NPTC said that, without an audit of the use of UCR revenue by the States, any increase in fees above that necessary to meet the changed definition of CMV is inherently unreasonable. The Snack Food Association also argued that the doubling of fees did not meet the "reasonable range" test, especially given

the "extreme economic pressures" facing the for-hire carrier industry. The American Bus Association also commented that FMCSA had merely "rubber-stamped" the Board's request "in the mistaken belief that it must approve any request," and questioned whether the Agency had fulfilled its duty to determine the reasonableness of a Board adjustment recommendation.

Response

FMCSA does not agree that the 2010 UCR fees are unreasonable. FMCSA has interpreted the statutory text that directs that any annual adjustment be "within a reasonable range" to mean that the determination of what is reasonable must be made in the context of its obligation to enable States to receive their statutorily mandated revenues. As explained in Section III, above, factors that frustrate the statutory objective of providing the participating States their entitled revenues are not consistent with FMCSA's statutory directive.

FMCSA disagrees that it has "rubber-stamped" the Board's recommendation or that the Secretary has not discharged his statutory duties. In fact, FMCSA concluded that the Board's recommendation submitted on April 3, 2009, did not adequately address three factors: carrier population, bracket shifting and enforcement. In the NPRM, FMCSA explained in detail why it believes that the fees should take these factors into account and how the fees should be calculated. In incorporating these factors into its proposed fee, including a detailed explanation of its calculations, FMCSA proposed a methodology very different from that which the Board recommended.

Finally, FMCSA does not agree that the reasonableness of the fees depends on an audit of States' use of UCR registration fees. Although several commenters asserted that FMCSA has a duty to ensure that States are using these revenues for safety enforcement, none identified with any specificity the legal basis for this assertion. FMCSA is not aware of any statutory or other provision that requires it to conduct an audit of State activities prior to adjusting the fees.

d. FMCSA Should Retain Current Fees

Comments

Several owner-operators asked explicitly that the current fees be kept in place while the implicit message from many other commenters was the same. One trucking company said that all fee increases "other than the absolute minimum necessary to support the programs" should be postponed until it is clear the motor carrier industry is moving out of the current recession. California U-Haul commented the fees should remain consistent with prior years, suggesting that an increased emphasis on enforcement would result in increased revenue.

Response

FMCSA does not agree that the 2010 fees should remain the same as the fees set for Registration Years 2007–2009. FMCSA has a statutory duty to enable States to achieve their revenue entitlements and does not believe that setting 2010 fees at current levels is consistent with that duty. As explained above, the Agency believes that the 2010 fees must take into account the change to the definition of CMV, bracket shifting and compliance rates.

e. Partial Increase Associated With Increased Enforcement

Comments

FMCSA received several comments requesting that the Agency modify the timing of the fee and alter the method of enforcement. One commenter requested a partial increase in the fees, with the remaining amount phased in over time. A commenter requested that FMCSA allow roadside enforcement to collect all outstanding UCR fees from that motor carrier for all registration years before allowing the motor carrier to continue its travel.

Response

FMCSA does not agree that these alternatives would present a better fee structure than that proposed in the NPRM. A phased-in fee structure would further complicate enforcement efforts, creating additional expenses and confusion for both participating States and registering entities. The 2010 fee structure is the Agency's best attempt to rectify the shortcomings of previous years' fees, including addressing population, bracket shifting and compliance issues. Finally, as explained above, while FMCSA can encourage States to take enforcement action indirectly by setting compliance goals, it has no authority to require States to take specific enforcement actions. Any effort to make UCR delinquency an out-of-service criterion must be taken up at the State level.

f. Increase Number of Brackets/Revise Bracket Structure

Comments

ATA and TIA approved of using the maximum number of brackets permitted by statute, as FMCSA had done. ATA and TIA also said that FMCSA had properly applied the principle of progressivity required by the Act so that the per-vehicle fees at the bottom of each bracket are substantially equivalent across the fee structure. However, other commenters criticized the bracket structure. One commenter argued that the fees should be assessed on a per-power-unit basis instead of using brackets.

A few commenters addressed the break point between the first two brackets. Both the Minnesota Trucking Association and the Missouri DOT supported changing bracket 1 from 0–2 to 0–1 and bracket 2 from 3–5 to 2–5, as recommended by the Board. This would keep more companies in the same tier category as previously and minimize the revenue loss. Another commenter said FMCSA should reconsider whether the lowest bracket should break at one or two power units. It cited a decision by the Board that a business operating one power unit is significantly different from one that operates two or more. ATA and TIA also addressed the lowest bracket and said that FMCSA should explain the discrepancy between its proposal and the Board's recommendation.

Response

While FMCSA acknowledges commenters' concerns about the bracket structure, the Agency has decided to retain the bracket structure from the current fees in this final rule. Inevitably, because of the limited number of brackets and heterogeneous types of vehicles and operations, either the existing UCR fee structure or a new UCR proposal could prove advantageous to some carriers and disadvantageous to other carriers. The changes proposed by FMCSA actually help to redress some of the disparities in fees per power unit that exist under the current rule. (*See* the Regulatory Flexibility Act section below.) The rule could be adjusted to reduce the impacts on any individual carrier or group of carriers, but given that the same revenue target would have to be met, this would only result in the collection of additional revenues from other carriers. Other changes in the bracket structure (such as increasing the number of brackets) would require a statutory amendment.

Nonetheless, in an effort to respond to comments on the bracket structure, FMCSA will assist the UCR Plan in revisiting the bracket structure when the UCR Plan begins considering any adjustments in fees for future registration years. The Agency can provide technical assistance to support a thorough analysis of alternative bracket structures to reduce the

economic impact on small businesses to the greatest extent practicable. While the statute requires the UCR Plan to develop no more than 6 and no fewer than 4 brackets of carriers (including motor private carriers) based on the size of the fleet, the statute does provide flexibility in the number of power units included in each of the brackets and allows the registration fees to be adjusted within a reasonable range on an annual basis if the fees are either insufficient to provide the participating States with the revenues they are entitled to receive or lead to a revenue excess (49 U.S.C. 14504a(f)(1)(E)). Therefore, separate from this rulemaking, the Agency will assist the UCR Plan in revisiting the bracket structure and in considering alternatives to the current structure, to the extent practicable under the current statute, while ensuring the States receive the funds necessary to fulfill the statutory requirement

g. Tie Fees to Other Motor Carrier Programs

Comments

One commenter suggested looking at the IRP as the basis for the UCR fees. State-issued registrations would not be issued until the required fees are paid. This would provide a fee that is more manageable for every power unit subject to submitting Internal Revenue Service Form 2290. Another urged "make it a requirement with a lesser fee to show proof of payment when doing the yearly registration or IFTA renewal same as the 2290." The California DMV argued that because the data in MCMIS are inaccurate due to poor carrier reporting and a confusing "interstate carrier" definition, the UCR fee calculation should be based on the IRP count of interstate carriers. Because the IRP requires a carrier to cross the jurisdictional line to be considered an interstate carrier, use of IRP would ensure an "absolute, accurate count" of interstate carriers, although it would exclude from UCR registration carriers operating in a single State while transporting interstate passengers or property. Fees also could be affixed to the IRP credential process.

Other comments suggested tying UCR funds to existing FMCSA grant programs (*e.g.,* Performance and Registration Information Systems Management [PRISM] or Motor Carrier Safety Assistance Program [MCSAP]). Commenters suggested that linking UCR funding to these programs would provide enforcement incentives to both participating and non-participating States.

Response

FMCSA does not believe that it has the legal authority to adopt the changes these commenters requested. The Board, not FMCSA, has the authority to issue the rules and regulations, including those related to administration of the program (49 U.S.C. 14504a(d)(2)). In the absence of statutory authorization, FMCSA lacks the authority to re-structure or order the re-structuring of the manner in which UCR fees are collected. However, some States have enacted legislation authorizing them to collect UCR fees at the same time they register vehicles and collect IFTA fees. FMCSA encourages all States to engage in this kind of proactive collection effort, but lacks the authority to mandate it.

Some of the program linkages and other suggestions submitted by commenters may have merit. However, all of them would require statutory changes that are clearly beyond FMCSA's power to accomplish in this rulemaking. Such changes may well be appropriate for consideration by Congress during the next reauthorization of motor carrier programs administered by the Department of Transportation but unless and until such changes are enacted, FMCSA must carry out its responsibilities under the current provisions of the statute.

h. Fees for 2010

Comments

ATA contends that the States may not begin assessing and collecting UCR fees for 2010 "until the fee structure is amended to reflect the statutory change [in the definition of CMVs]."

Response

The comment by ATA does not reflect a correct interpretation of the effect of the amendment to 49 U.S.C. 14504a(a)(1)(A) modifying the definition of "commercial motor vehicle" that became effective for years beginning after December 31, 2009. The FMCSA recently issued regulatory guidance on the effect of the amendment on the application of the fees established in 49 CFR 367.20 (*Regulatory Guidance Concerning the Applicability of Fees for the Unified Carrier Registration Plan and Agreement,* 75 FR 9487 (March 2, 2010). The statutory amendment of the applicable definition of commercial motor vehicles in 49 U.S.C. 14504a that applies beginning after December 31, 2009, also governs the application of the fees established by § 367.20 so that it applies to registration years beginning after December 31, 2009 until superseded by an adjusted set of fees. Therefore, the States participating in the UCR Plan and Agreement may assess and collect fees pursuant to the fee schedule set forth in 49 CFR 367.20 until the fees adopted in this final rule become effective. A technical change in the heading of 49 CFR 367.20 is necessary to reflect the regulatory guidance.

VI. The Final Rule

After considering the comments received on the proposed rule, FMCSA is adopting the final rule as proposed with changes.

In accordance with 49 U.S.C. 14504a(g)(4), FMCSA proposed in the NPRM to approve the amount of revenue under the UCR Agreement to which each State participating in 2010 is entitled. The FMCSA included in its proposed revenue estimate administrative expenses of $5 million and a revenue reserve of 0.5 percent. After evaluating comments that opposed inclusion of the administrative expenses and the revenue reserve, FMCSA has concluded that it is statutorily required to include the administrative expenses, but has decided to remove the revenue reserve component from the fee calculations in the final rule. FMCSA is, therefore, approving the amount of revenue under the UCR Agreement to which each State participating in 2010 is entitled, and the final 2010 revenue target, as specified in the following table.

TABLE 5—STATE UCR REVENUE ENTITLEMENTS AND FINAL 2010 REVENUE TARGET

State	Total 2010 UCR revenue entitlements
Alabama	$2,939,964.00
Arkansas	1,817,360.00
California	2,131,710.00
Colorado	1,801,615.00
Connecticut	3,129,840.00
Georgia	2,660,060.00
Idaho	547,696.68
Illinois	3,516,993.00
Indiana	2,364,879.00
Iowa	474,742.00
Kansas	4,344,290.00
Kentucky	5,365,980.00
Louisiana	4,063,836.00
Maine	1,555,672.00
Massachusetts	2,282,887.00
Michigan	7,520,717.00
Minnesota	1,137,132.30
Missouri	2,342,000.00
Mississippi	4,322,100.00
Montana	1,049,063.00
Nebraska	741,974.00
New Hampshire	2,273,299.00
New Mexico	3,292,233.00
New York	4,414,538.00

TABLE 5—STATE UCR REVENUE ENTITLEMENTS AND FINAL 2010 REVENUE TARGET—Continued

State	Total 2010 UCR revenue entitlements
North Carolina	372,007.00
North Dakota	2,010,434.00
Ohio	4,813,877.74
Oklahoma	2,457,796.00
Pennsylvania	4,945,527.00
Rhode Island	2,285,486.00
South Carolina	2,420,120.00
South Dakota	855,623.00
Tennessee	4,759,329.00
Texas	2,718,628.06
Utah	2,098,408.00
Virginia	4,852,865.00
Washington	2,467,971.00

TABLE 5—STATE UCR REVENUE ENTITLEMENTS AND FINAL 2010 REVENUE TARGET—Continued

State	Total 2010 UCR revenue entitlements
West Virginia	1,431,727.03
Wisconsin	2,196,680.00
Sub-Total	106,777,059.81
Alaska	500,000
Delaware	500,000
Total State Revenue Entitlement	107,777,060
Administrative Expenses	5,000,000
Total 2010 Revenue Target	112,777,060

FMCSA is also revising the RPR factor set out in Table 13 of the NPRM. Because of time constraints, an approximate recent population was used to develop the weighted average projected compliance rate of 86.42 percent. Data for 2008 are now available that provide the actual number of motor carrier entities allocated between the participating and non-participating States. As a result, a slight adjustment in the calculations in Table 13 has been made. The revised table is set out below:

TABLE 6 (TABLE 13 REVISED)—REGISTRATION PERCENTAGE REASONABLENESS (RPR) FACTOR

	Recent population (2008)	Board's projected registrations	FMCSA's estimated RPR	FMCSA's projected registrations
Participating States	370,575	333,518	90%	333,518
Non-Participating States	62,960	50,368	59%	37,146
Total	433,535	383,886	85.50%	370,664

The one substantial change made in this final rule involves the appropriate adjustment to recognize bracket shifting. In the NPRM, FMCSA considered empirical data reflecting the participating States' actual experience with bracket shifting during the years 2007–2009. The analysis indicated that the States experienced a reduction of expected revenues of approximately 25% as a result of bracket shifting during those registration years. The proposed fees in the NPRM were based on an expectation that a similar amount of revenue loss from bracket shifting would occur in 2010. The adjustment was made because motor carriers would register in a different bracket than the bracket predicted from the number of CMVs reported to FMCSA and reflected in the MCMIS data. As previously explained, there are several provisions that permit motor carriers to adjust the number of commercial motor vehicles reported to FMCSA when registering and determining the applicable fee. In addition, as suggested in the comments, some carriers may not have included towed CMVs in the number of CMVs used to determine the applicable fee because of confusion or an unclear understanding of the applicable requirements.[11] Now that the statutory amendment means trailers and other towed vehicles are not to be considered in determining the number of commercial motor vehicles, the possibility of confusion or uncertainty is reduced. Because of the many other legitimate reasons that bracket shifting can occur, FMCSA finds that it is appropriate, in setting the fees in this final rule, to incorporate a smaller factor of 15% (instead of the 25% proposed in the NPRM) for the revenue loss expected to occur in 2010 because of bracket shifting.

The table below shows the fees adopted by this rule as a result of the FMCSA's decision to remove the revenue reserve component from the fee calculations, the revision of the RPR factor and the modification of the factor used to adjust for the estimated effect of bracket shifting in 2010.

TABLE 7—FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR REGISTRATION YEAR 2010

Bracket	Number of CMVs owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$76	$76
B2	3–5	227	
B3	6–20	452	
B4	21–100	1,576	
B5	101–1,000	7,511	
B6	1,001 and above	73,346	

[11] Under SSRS, only self-propelled vehicles were ever subject to the payment of the per-vehicle fees charged, which may have created some confusion when the UCR Plan's fees were implemented. *See* 49 CFR 367.1(c).

As indicated previously in this preamble, FMCSA will assist the UCR Plan in revisiting the bracket structure when the Plan begins considering any adjustments in the fees for future registration years. The Agency can provide technical assistance to support a thorough analysis of alternative bracket structures to reduce the economic impact on small businesses to the greatest extent practicable.

FMCSA also received comments supporting its proposal to revise 49 CFR part 367 by eliminating current subpart A, which contains regulations implementing the provisions of now-repealed 49 U.S.C. 14504. Therefore, this final rule removes current 49 CFR part 367 subpart A in its entirety. Second, the heading of 49 CFR 367.20 is changed to specify that the fees established by that section are applicable for each registration year until a subsequent adjustment in the fees becomes effective. Third, a new 49 U.S.C. 367.30 establishes the fees applicable to registration years beginning on January 1, 2010. As described above, the elimination of a revenue reserve from the 2010 revenue target and a revision to the blended estimated compliance rate has caused FMCSA to revise and reduce slightly the 2010 fees proposed in the NPRM. Finally, this final rule makes a technical change in the headings to the fee tables to make clear that the fees are applicable to all entities that are required to register and pay fees to the UCR Plan.

VII. Regulatory Analyses and Notices

Administrative Procedure Act

The Administrative Procedure Act's rulemaking provision in subsection (d)(3) of 5 U.S.C. 553 allows FMCSA to make a final rule effective on its publication date for good cause. Making this final rule effective on the date of publication will allow the participating States to begin registering motor carrier entities and billing and collecting fees for 2010 in accordance with the established procedures. Such immediate effectiveness will not harm any person or regulated entity, but will avoid any confusion caused by departure from those procedures. Any delay in collecting 2010 fees could also have a serious impact on participating States by causing them to lay off State employees and to curtail compliance and enforcement efforts, thereby jeopardizing the statutory objective of ensuring State revenues. FMCSA therefore finds that it is necessary to make this final rule effective immediately upon publication.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

In the NPRM, FMCSA made a preliminary determination that the proposed rule was not a significant regulatory action within the meaning of Executive Order 12866 and the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979). It made this preliminary determination by finding that the costs of the proposed regulatory action would not exceed the $100 million annual threshold as defined in Executive Order 12866.

Comments on the Economic Significance and Other Significance of the Rulemaking

Several commenters said that FMCSA's determination that this is not a significant rulemaking is erroneous and that the regulatory action involved is significant, both economically and otherwise under Executive Order 12866, and therefore deserves a full administrative review.

Response

1. The Final Rule Is Not Economically Significant

FMCSA does not agree with the commenters' contention that this rule is economically significant. Although the total fees collected are projected to be over $100 million annually, the change from the existing situation (*e.g.,* the approximately $77 million collected in 2008 and in 2009 (*see* 74 FR at 45586) is well below $100 million. This situation is similar to previous UCR rulemakings, which were also determined to be not economically significant. Finally, as shown under section V (C)(1) above, the effects on the motor carrier industry would be too small on a per-CMV basis to have a material impact.

Therefore, FMCSA adheres to its preliminary determination that this rule is not economically significant based on the size of the additional fees to be collected under the UCR. The costs of the rule are required pursuant to an explicit Congressional mandate. Because a majority of the fees under the final rule are already being collected under the UCR system, the total cost of the final rule will be substantially less than $100 million per year. A major intent of the proposed rule is to eliminate the revenue shortfalls that the UCR system has experienced over the past several years; that shortfall was $38 million in 2008, for instance, and of similar magnitude in 2007 and 2009. This increase, though, will clearly be less than the $100 million threshold for a significant impact on the economy. The Agency has prepared a regulatory analysis of the rule. A copy of the analysis document is included in the docket referenced at the beginning of this notice.

2. The Final Rule Is Significant on Other Grounds

FMCSA finds that novel legal or policy issues are raised in this regulatory action, and that the final rule is significant under Executive Order 12866. FMCSA received over 150 comments, a number of which raised novel legal or policy issues that are appropriate for review under the regulatory review provisions of that order.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), (5 U.S.C. 601–612), FMCSA has considered the effects of this regulatory action on small entities. The fees being set in this rule would affect large numbers of small entities because the rule sets fees for hundreds of thousands of carriers of all sizes, and small entities are defined to include all entities that are not dominant in their industries. In previous rulemakings, FMCSA identified for-hire carriers with fewer than 145 power units (*i.e.,* trucks or tractors) as small. Thus, all of the for-hire carriers in Brackets 1 through 4 would be considered small, as would many of those in Bracket 5.

Carriers are not required to report revenue to the Agency, but are required to provide the Agency with the number of power units they operate when they apply for operating authority and to update this figure biennially. Because FMCSA does not have direct revenue figures, power units serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a power unit. With regards to truck power units, the Agency determined in the 2003 Hours of Service Rulemaking RIA [12] that a power unit produces about $172,000 in revenue

[12] Regulatory Analysis for: Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations, Final Rule—Federal Motor Carrier Safety Administration. 68 FR 22456—Published 4/23/2003.

annually (adjusted for inflation).[13] According to the SBA, motor carriers with annual revenue of $25.5 million are considered a small business.[14] This equates to 148 power units (25,500,000/172,000). Thus, FMCSA considers motor carriers with 148 power units or less to be a small business for SBA purposes.

With regards to bus power units, the Agency conducted a preliminary analysis to estimate the average number of power units (PUs) for a small entity earning $7 million annually, based on an assumption that a passenger carrying CMV generates annual revenues of $150,000. This estimate compares reasonably to the estimated average annual revenue per power unit for the trucking industry ($172,000). A lower estimate was used because buses generally do not accumulate as many vehicle miles traveled (VMT) per power units as trucks,[15] and it is assumed therefore that they would generate less revenue on average. The analysis concluded that passenger carriers with 47 PUs or fewer ($7,000,000 divided by $150,000/PU = 46.7 PU) would be considered small entities. The Agency then looked at the number and percentage of passenger carriers registered with FMCSA that would fall under that definition (of having 47 PUs or less). The results show that 28,838 [16] (or 99%) of all active registered passenger carriers have 47 PUs or less. Therefore, the overwhelming majority of passenger carriers would be considered small entities.

After careful consideration, however, FMCSA has determined that the recommended UCR fee will, in every case involving a viable small entity, be well below the threshold level of one percent of revenues used for determining significant impacts. This conclusion is based the observation that the maximum fee per vehicle is $76, which is less than one percent of the $14,500 annual salary of even a single employee working 40 hours per week for 50 weeks per year and earning the current Federal minimum wage of $7.25.[17] Because an entity without sufficient revenues to pay even one employee per vehicle would not be viable, it is clear that the recommended UCR fees will not reach the threshold of one percent of revenues. Thus, FMCSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Several commenters addressed the impact of the change in the fees on small entities. A carrier with 11 tractors noted that its costs are spread over fewer assets than those of larger companies. The carrier also said that any further cost increases will drive smaller companies out of business. The American Bus Association said that the average bus operator has eight motorcoaches, and described the operator as a small business that would be impacted by the fees. FMCSA cannot validate this and therefore did not include this in the analysis. In contrast, another carrier approved of the proposed fee structure because it would benefit owner-operators and small trucking companies.

Based on this analysis as well as the rule's regulatory evaluation, FMCSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government, or by the private sector of $136.1 million or more in any one year, must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that this rule will not have an impact of $136.1 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA has determined that this rulemaking would not create an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has determined that this rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this proposal would preempt any State law or regulation. As detailed above, the UCR Board of Directors includes substantial State representation. The States have already had notice of this action and opportunity for input through their representatives and through comments submitted on the NPRM. FMCSA received comments from the States that failure to promulgate this rule would have a substantial direct effect on the States as outlined in Executive Order 13132.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. FMCSA has determined that there are no current or new information collection requirements by FMCSA associated with this rule.

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.h of the Order from further environmental

[13] The 2000 TTS Blue Book of Trucking Companies, number adjusted to 2008 dollars for inflation.

[14] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification (NAIC) System codes, effective August 22, 2008. See NAIC subsector 484, Truck Transportation.

[15] FMCSA Large Truck and Bus Crash Facts 2008, Tables 1 and 20; *http://fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008Large_TruckandBusCrashFacts.aspx.*

[16] FMCSA MCMIS snapshot on 2/19/2010.

[17] The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than $7.25 per hour effective July 24, 2009. *http://www.dol.gov/esa/whd/flsa/.*

documentation. The CE under Appendix 2, paragraph 6.h relates to establishing regulations and actions taken pursuant to the regulations implementing procedures to collect fees that will be charged for motor carrier registrations and insurance.

FMCSA has also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it would not be a "significant energy action" under that Executive Order because it would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 367

Commercial motor vehicle, Financial responsibility, Motor carriers, Motor vehicle safety, Registration, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration is amending title 49 CFR Chapter III, subchapter B, part 367 as follows:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

■ 1. Revise the authority citation for part 367 to read as follows:

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.73.

Subpart A—[Removed and Reserved]

■ 2. Remove and reserve subpart A, consisting of §§ 367.1 through 367.7 and Appendix A to subpart A.

Subpart B—Fees Under the Unified Carrier Registration Plan and Agreement

■ 3. Amend subpart B by revising the heading of § 367.20 to read as follows:

§ 367.20 Fees Under the Unified Carrier Registration Plan and Agreement for Each Registration Year Until Any Subsequent Adjustment in the Fees Becomes Effective.

* * * * *

■ 4. Add § 367.30 to subpart B to read as follows:

§ 367.30 Fees Under the Unified Carrier Registration Plan and Agreement for Registration Years Beginning in 2010.

FEES UNDER THE UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT FOR EACH REGISTRATION YEAR

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0–2	$76	$76
B2	3–5	227	
B3	6–20	452	
B4	21–100	1,576	
B5	101–1,000	7,511	
B6	1,001 and above	73,346	

Issued on: April 21, 2010.

Alais L.M. Griffin,

Chief Counsel.

[FR Doc. 2010–9674 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2009-0025]
[MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List Susan's Purse-making Caddisfly (*Ochrotrichia susanae*) 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 Susan's purse-making caddisfly (*Ochrotrichia susanae*) as endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing Susan's purse-making caddisfly 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 Susan's purse-making caddisfly or its habitat at any time.

DATES: The finding announced in this document was made on April 27, 2010.

ADDRESSES: This finding is available on the internet at *http://www.regulations.gov* at docket number FWS-R6-ES-2009-0025. 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, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Patricia S. Gelatt, Supervisor, Western Colorado Field Office, (see **ADDRESSES**); by telephone (970-243-2778, extension 26); or by facsimile (970-245-6933). 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 that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (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 Action

On July 8, 2008, we received a petition via e-mail from the Xerces Society for Invertebrate Conservation, Dr. Boris C. Kondratieff (Colorado State University), Western Watersheds Project, WildEarth Guardians, and Center for Native Ecosystems requesting that we list Susan's purse-making caddisfly as endangered under the Act and designate critical habitat. The petition included supporting information regarding the species' description, taxonomy, historical and current distribution, present status, habitat requirements, and potential threats. We acknowledged the receipt of the petition in a letter to the petitioners dated August 5, 2008. In the letter, we stated that we determined an emergency listing was not necessary. We also stated that, due to court orders and settlement agreements for other listing and critical habitat actions, all of our fiscal year 2008 listing funds had been allocated and that further work on the petition would not take place until fiscal year 2009.

Funding became available in fiscal year 2009, and we began work on the 90–day finding in November 2008. The 90–day finding was published in the **Federal Register** on July 8, 2009 (74 FR 32514). This notice constitutes the 12–month finding on the July 8, 2008, petition to list Susan's purse-making caddisfly as endangered.

Species Information

Species Description

Susan's purse-making caddisfly is a small, hairy, brown caddisfly in the family Hydroptilidae under the Order Trichoptera. Most of its life is spent as an aquatic larva in spring and nearby stream habitats. Adults have forewings 2 millimeters (mm) (0.08 inch (in.)) long. The wings are dark brown with three transverse silver bands, one each at the wing base, the midline, and the apex (Flint and Herrmann 1976, p. 894).

The larvae of Hydroptilidae are unusual among the case-making families of Trichoptera in that they are free-living until the final (fifth) larval instar (developmental stage between molts) (Wiggins 1996, p. 72). When the larvae molt to the fifth instar, they develop enlarged abdomens, build purse-shaped cases from silk and sand, and become less active (Wiggins 1996, p. 71). They construct a case that can be portable or cemented to the substrate (Wiggins 1996, p. 71). Larvae in this family are very small but can reach up to 6 mm (0.3 in.) in length (Wiggins 1996, p. 71). The head and the dorsal surface (top) of all three thoracic segments are dark brown and sclerotized (hardened) (Flint and Herrmann 1976, p. 894). Larval cases are small, flattened, bivalved, and open at each end, similar to other members of the genus *Ochrotrichia*. However, Susan's purse-making caddisfly larval cases are slightly shorter proportionally and are made from smaller grains of sand (Flint and Herrmann 1976, p. 894). The larvae eventually pupate (metamorphose from a larvae to an adult) within the case.

Feeding behavior of Susan's purse-making caddisfly larvae has not been observed directly, but larvae in this genus generally feed by scraping diatoms from rocks (Wiggins 1996, p. 96), and larvae in the Hydroptilidae have been described as eating the cellular content of algae (Vieira and Kondratieff 2004, p. 47). Where the species has been collected, rocks that were thickly covered with larval cases were associated with heavy growth of filamentous algae and moss (Flint and Herrmann 1976, p. 897).

Adult Trichoptera have reduced mouthparts and lack mandibles, but can ingest liquids. The adult flight period is estimated to be from late June to early August (Flint and Herrmann 1976, p. 897), although Herrmann *et al.* (1986, p. 433) stated that adults were collected from mid-April to late July. The specific life cycle of Susan's purse-making caddisfly is not known (Kondratieff 2009a, pers. comm.; Ruiter 2009a, pers. comm.). They are thought to produce one generation per year (Flint and Herrmann 1976, p. 897). After emerging from their pupal cases, they will mate and lay eggs in the water (Myers 2010, pers. comm.) and most likely only live for a week or two as adults. It is not known how long it takes for Susan's purse-making caddisfly eggs to develop into larvae, how long each larval stage lasts, or how long they are in the pupal state.

Taxonomy

Susan's purse-making caddisfly was first described as *Ochrotrichia susanae* by Flint and Herrmann (1976, pp. 894-898) from specimens collected in 1974 at Trout Creek in Chaffee County, Colorado. The genus *Ochrotrichia* is widespread and fairly diverse in North America, with over 50 described species (Wiggins 1996, p. 96). Adults can be distinguished from other species in the genus *Ochrotrichia* based on characteristics of the genitalia. No challenges to the taxonomy have arisen since the species was named. We find that Flint and Hermann (1976, pp. 894-898) provide the best available information on the taxonomy of *Ochrotrichia susanae*. Therefore, we consider the Susan's purse-making caddisfly a valid species for listing under the Act.

Historic and Current Distribution

Susan's purse-making caddisfly has only been historically documented from three sites: (1) Trout Creek Spring in Chaffee County, Colorado; (2) High Creek Fen in Park County, Colorado; and (3) Jaramillo Creek in Valles Caldera, New Mexico. Based on the best available information, we consider all three locations to be extant, as described in more detail below.

From 1974 to 1994, Susan's purse-making caddisfly was only known to exist at and below Trout Creek Spring on U.S. Forest Service (USFS) land (Pike-San Isabel National Forest) in Chaffee County, Colorado (Herrmann *et al.* 1986, p. 433). Larvae, pupae, and adults were collected at the spring outfall area and downstream in Trout Creek at the Highway 285 Bridge, about 130 meters (m) (430 feet (ft)) away from the spring. Multiple collection attempts below the Highway 285 Bridge have not resulted in the caddisfly being found. There is no known reason for lack of occurrence downstream of the bridge (Herrmann 2010, pers. comm.). The spring and downstream stretch of creek habitat will hereafter simply be called Trout Creek Spring unless specific areas are mentioned. Trout Creek Spring is at an elevation of about 2,750 m (9,020 ft). The last known observation of the caddisfly at Trout Creek Spring was by one of the co-authors of the species description, Dr. Scott Herrmann, in 2007 (Herrmann 2009a, pers. comm.). We unsuccessfully attempted to relocate the species at this location at the end of July 2009; however, survey conditions were poor (Ireland 2009, p. 2). Based on the long-term history of occupancy and the poor survey conditions at our last

site visit, we consider the Trout Creek Spring site to still be occupied.

In 1995, Susan's purse-making caddisfly specimens were discovered and collected at High Creek Fen in Park County, Colorado, about 27 kilometers (km) (17 miles (mi)) north of the previously known locality (Durfee and Polonsky 1995, pp. 1, 5, 7). High Creek Fen is a unique groundwater-fed wetland with high ecological diversity. It is considered a rare type of habitat and the southernmost example of this unique habitat in North America (Cooper 1996, pp. 1801, 1808; Rocchio 2005, p. 10; Legg 2007, p. 1). High Creek Fen is primarily owned by The Nature Conservancy (TNC) and the Colorado State Land Board (CSLB), as well as private landowners. The fen is about 2,980 m (9,320 ft) in elevation. Susan's purse-making caddisfly pupae were found at High Creek Fen on July 29, 2009, during a site visit in conjunction with the Trout Creek Spring site visit (Ireland 2009, p. 1). A subsequent visit to High Creek Fen on August 11, 2009, resulted in capture of an adult Susan's purse-making caddisfly (Ruiter 2009b, pers. comm.).

In July 2008, an adult Susan's purse-making caddisfly was discovered near Jaramillo Creek within the Valles Caldera National Preserve (VCNP) west of Los Alamos, New Mexico (Flint 2009a, pers. comm.). The Preserve is owned by the U.S. Department of Agriculture (part of the National Forest System) but run by a nine member Board of Trustees; the Supervisor of Bandelier National Monument, the Supervisor of the Santa Fe National Forest, and seven other members with distinct areas of experience or activity appointed by the President of the United States (Valles Caldera Trust 2003, pp. 46-47). Dr. Oliver Flint, one of the co-authors of the species' description, identified the caddisfly collected from VCNP. The elevation of the capture area is approximately 2,750 m (8,600 ft). No larvae were discovered at the Jaramillo Creek site, so we do not know if the adult caddisfly represents a breeding population. If there is a breeding population in VCNP, it is unknown how close the adult was to its larval habitat and whether larvae are occupying a spring near Jaramillo Creek, Jaramillo Creek only, or a spring or creek in a nearby drainage. Adults are thought to be weak fliers, likely only flying 1 to 2 m (3 to 7 ft) when disturbed. They are thought to remain close to larval habitat for mating and oviposition (Xerces Society *et al.* 2008, pp. 6-7). Therefore, dispersal distance is thought to be very small (Xerces Society *et al.* 2008, pp. 6-7). This suggests that larval habitat was close to the adult capture site on Jaramillo Creek, but larval or pupal surveys specific to Susan's purse-making caddisfly have not been conducted on Jaramillo Creek or in VCNP. The postulated small dispersal distance also suggests that the population in VCNP is isolated from the populations in Colorado, and that the populations within Colorado are isolated from one another (Xerces Society *et al.* 2008, pp. 5, 12, 15). It is possible that incidental dispersal via wind or adhesion to animals or humans could occur, but neither dispersal method has been documented, and dispersal is likely uncommon (Kondratieff 2010, pers. comm.).

The Service recognizes that only three populations of Susan's purse-making caddisfly have been found since the species' discovery in 1974 (Flint and Herrmann 1976), and they are undoubtedly rare. In 1986, Herrmann *et al.* compiled a list of records for Susan's purse-making caddisfly, but this was only based on existing records and not the result of comprehensive field surveys. Despite the probable rarity, we believe additional populations may exist based on the following: (1) surveys have not encompassed all potential spring habitats in Colorado and New Mexico (Herrmann 2010, pers. comm.; Jacobi 2009, pers. comm.; Kondratieff 2010, pers. comm.; Ruiter 2010, pers. comm.); (2) it is particularly likely that potential spring habitats occurring on private land have not been surveyed (Kondratieff 2010, pers. comm.); (3) the caddisfly can only be identified at the pupal and adult stages so the species could easily be missed if surveys take place outside of the period from mid-June to early August (Flint and Herrmann 1976); (4) the adults are very small, only live for a week or two, and may not fly if conditions are too cold or windy, again causing surveyors to miss them; and (5) general surveys of aquatic species (not focusing on this particular species) may simply miss either pupae or adults due to low population size.

Status

Susan's purse-making caddisfly has a Global Heritage Status Rank of G2, a National Status Rank of N2, and a Colorado State Rank of S2 (NatureServe 2008, pp. 1-4). NatureServe defines the G2 rank as signifying that a species is imperiled (at a high risk of extinction) globally due to a very restricted range, very few populations, steep population declines, or other factors. Species in these categories are defined as vulnerable to extirpation nationally or within a State or province. Only the Trout Creek Spring site is on file with NatureServe (2008, p. 1), but if High Creek Fen and Jaramillo Creek were added the rank would not change, since the NatureServe ranking system of G2 and N2 allows for 20 or fewer populations (NatureServe 2009, pp. 4, 7). No population estimate exists for the caddisfly at Trout Creek Spring, but Flint and Herrmann (1976, p. 898) collected 237 adults on July 1, 1975, and 118 adults on July 20, 1975. No adults were present during an August 5, 1975, collection attempt at Trout Creek Spring (Flint and Herrmann 1976, p. 898). Similarly, no extensive collection or population size estimate has been made for either High Creek Fen or Jaramillo Creek.

Habitat Requirements

Larval and adult Susan's purse-making caddisflies are found in and around spring and stream habitat (Flint and Herrmann 1976, p. 897). Larvae inhabit waters that are cold, hard, well-oxygenated, highly buffered, and extremely low in trace metals (Flint and Herrmann 1976, p. 897). Adult riparian habitat preferences, if they exist, are unknown (Kondratieff 2009b, pers. comm.; Ruiter 2009c, pers. comm.). Since the adults only live for a week or two, it is possible that a specific vegetation type is not important to them. The riparian habitats adjacent to the streams at Trout Creek Spring and High Creek Fen are quite different from each other in both species present and vegetative structure (Ireland 2009, pp. 1-2), suggesting a lack of vegetation preference. However, riparian vegetation of some sort is likely beneficial for adult shelter and survival (Kondratieff 2009b, pers. comm.; Ruiter 2009c, pers. comm.).

After emerging from their pupal cases as adults, females will mate and lay eggs in the water (Myers 2010, pers. comm.). Caddisflies typically lay eggs on immobile rocks, gravel, rooted vegetation, or anchored wood that will reduce movement of the eggs and, hence, reduce chances of abrasion or burial of the eggs by sediment (Myers 2010, pers. comm.). Specific information on substrate used for egg-laying by Susan's purse-making caddisfly is not available.

Physical and chemical conditions of Trout Creek Spring were assessed in 1975 (Flint and Herrmann 1976, pp. 894-897). Water temperatures in the spring habitat were cold and varied little (14.4 to 15.8 °C (57.9 to 60.4 °F)). Stream conditions included extremely high levels of dissolved oxygen (at or near 100-percent saturation), as well as high concentrations of dissolved calcium (Ca), magnesium (Mg), and

sulfate (SO_4) (see Table 1 below), which gave the water a higher electrical conductance value than typically seen in most regional streams at the same elevation (Flint and Herrmann 1976, p. 897). Conductivity is a measure of the level of salts in water as a result of elements such as calcium and magnesium. In 2009, temperature, pH, and total alkalinity were within the range of samples analyzed in 1975 (Herrmann 2009b, pers. comm.). Analysis of additional water chemistry variables has not been completed.

Water quality samples were taken in 1995 at High Creek Fen by Durfee and Polonsky (1995) and on undisclosed dates by Cooper (1996). High Creek Fen appears to have similar water quality characteristics (see Table 1 below) as Trout Creek Spring (Durfee and Polonsky 1995, p. 5 and Table 2; Cooper 1996, pp. 1801, 1803). Water samples in Jaramillo Creek were taken in 2005 (Brooks 2009). The range of pH in Jaramillo Creek and a nearby spring is similar to the other two sites (see Table 1 below). The conductivity was lower than Trout Creek Spring or High Creek Fen (Brooks 2009), indicating there are less salts in the water at VCNP.

Trout Creek Spring values in Table 1 incorporate the range for both the spring proper and samples taken in the creek down to the Highway 285 Bridge (Flint and Herrmann 1976, p. 897). High Creek Fen samples incorporate a range from three water sources feeding the fen (Cooper 1996, p. 1803). Jaramillo Creek sample values include both the creek and a nearby spring location (Brooks 2009).

TABLE 1. PHYSIO-CHEMICAL PROPERTIES OF WATER AT SUSAN'S PURSE-MAKING CADDISFLY LOCATIONS (BROOKS 2009; COOPER 1996; FLINT AND HERRMANN 1976).

SITE	pH	Conductance (μS/cm)	Ca(mg/l)	Mg(mg/l)	Na(mg/l)	K(mg/l)	SO_4(mg/l)	Cl(mg/l)
Trout Creek Spring	7.2-8.2	280-400	38-52	14-21	2.1-5.3	0.4-1.32	19-59	1.5-2.2
High Creek Fen	7.8-8.1	420-2558	55-93	30-98	8.4-25.4	0.8-2.7	34.7-815.4	4.6-42.6
VCNP	6.6-8.0	61-76					3.1-3.9	0.3-1.5

Flint and Herrmann (1976, p. 897) state that conductance was directly related to calcium, magnesium, and sulfate concentrations. This conclusion appears logical, as High Creek Fen also had high concentrations of these elements and an even higher range of conductance than Trout Creek. Jaramillo Creek had low sulfate and low conductance compared to the other two locations (see Table 1 above). This outcome may suggest that calcium and magnesium levels were low as well, but actual levels were not analyzed. Since only an adult caddisfly was caught near Jaramillo Creek and we do not know if it came from the creek near the capture site, a nearby spring, or elsewhere, we do not know if the low conductance and sulfate (SO_4) and chloride (Cl) values represent a lower range that Susan's purse-making caddisfly larvae and pupae can survive in.

Temperature, pH, dissolved oxygen, total dissolved solids, and conductivity probably have the greatest influence on distribution of the caddisfly (Myers 2009, pers. comm.). Only pH and conductivity were measured at all three sites, and total dissolved solids were not analyzed at any of the three locations. We do not know if the caddisfly prefers springs with higher conductivity. Both Trout Creek Spring and High Creek Fen, where both larvae and pupae have been identified, have high conductivity. However, Jaramillo Creek has relatively low conductivity. Consequently, a range of conductivity levels may be suitable for Susan's purse-making caddisfly, and, therefore, more springs may be available for occupancy. However, as Myers (2009, pers. comm.) mentions, factors other than conductivity may be influencing habitat occupancy by Susan's purse-making caddisfly. With only three locations and scant available data, the range of habitat Susan's purse-making caddisfly can live in remains unknown, but the best available information suggests that the water quality will be similar to the range of variables analyzed in the Trout Creek Spring and High Creek Fen areas.

Larval and pupal Susan's purse-making caddisfly were collected at Trout Creek Spring in 1974 and 1975 (Flint and Herrmann 1976). Larvae and pupae primarily inhabited the sides of rocks in both the spring outfall and downstream locations. Concentrations of caddisflies were found in areas directly below small waterfalls and were often clustered in clumps that covered the rocks (Flint and Herrmann 1976, pp. 894-897). During a 2009 site visit, concerns were raised that Trout Creek Spring may be impacted by poor water quality because of large amounts of filamentous algae in Trout Creek (Xerces Society 2009, p. 2). However, during earlier collections, larval and pupal cases were often found on the same rocks that had thick growths of moss and filamentous algae (Flint and Herrmann 1976, p. 897). Additionally, temperature, pH, and total alkalinity in 2009 were within the range of samples analyzed in 1975, indicating that the water quality at Trout Creek Spring has remained the same in these respects since 1975 (Herrmann 2009b, pers. comm.).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this finding, information pertaining to Susan's purse-making caddisfly in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In making our 12–month finding, we considered and evaluated the best available scientific and commercial information.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Livestock Grazing

Susan's purse-making caddisfly appears to require cold and well-oxygenated water (Flint and Herrmann 1976, p. 897). The species could be negatively impacted by decreased riparian vegetation, stream bank destabilization, and increases in water temperature if livestock grazing is not well managed. Intensive grazing may lead to erosion due to removal of riparian and upland vegetation, removal of soil litter, increased soil compaction via trampling, and increased area of bare ground (Schulz and Leininger 1990, pp. 297-298; Fleischner 1994, pp. 631-636). Bare, compacted soils allow less water infiltration, which generates more surface runoff and can contribute to erosion as well as flooding and stream bank alterations (Abdel-Magid *et al.* 1987, pp. 304-305; Orodho *et al.* 1990, pp. 9-11; Chaney *et al.* 1993, pp. 8-15). Increased erosion leads to higher sediment loads in nearby waters, which can degrade in-stream and riparian habitat and increase water turbidity. The more turbid the water, the more sediment it is carrying. Sediment can affect the caddisfly by reducing respiration ability; smothering eggs, larvae, and pupae; reducing forage for the larvae; and limiting suitable sites for egg laying (Myers 2010, pers. comm.).

The combined impacts of vegetation loss, soil compaction, stream bank destabilization, and increased sedimentation associated with intensive livestock grazing can have a profound effect on aquatic macroinvertebrates. One study found a dramatic decline in macroinvertebrate abundance and species richness for some taxa, including caddisflies, on grazed versus ungrazed sites in Oregon (McIver and McInnis 2007, pp. 293, 300-301). A variety of aquatic macroinvertebrate community attributes relating to taxa diversity, community balance, trophic status (what level an animal is on the food chain), and pollution tolerance were negatively impacted by moderate or heavy grazing in small mountain streams in Virginia, compared to lightly grazed or ungrazed control areas (Braccia and Voshell 2007, pp. 196-198).

In 2008, the USFS issued an environmental assessment (EA) for Rangeland Allotment Management Planning in the Salida-Leadville Planning Area (USFS 2008a) that covers about 115,000 hectares (ha) (284,000 acres (ac)) around Trout Creek Spring. Trout Creek Spring is in the extreme uppermost portion of a finger of a grazing allotment (the Fourmile Allotment) on the Pike-San Isabel National Forest (USFS 2008a, Appendix 1, p. 1). The majority of the allotment does not influence the Trout Creek Spring habitat. No grazing from cattle on the Fourmile Allotment occurs around the caddisfly's habitat in Trout Creek Spring because the only place where cattle could access the spring, the western bank from County Road 309, is steep (Gaines 2009a, pers. comm.; USFS 2009, p. 5).

The Bassam Allotment is immediately downstream of the Fourmile Allotment. The allotment ends at the Highway 285 Bridge, and livestock cannot go upstream due to a fence at the allotment boundary (USFS 2008a, Appendix 1 Bassam C&H Range Improvements, p. 1). Cattle can access the area below the bridge but rarely do (USFS 2010, p. 1). Grazing impacts could affect Susan's purse-making caddisfly habitat downstream of the bridge if the species historically occurred down there, but it has never been collected downstream of the bridge (Herrmann 2010, pers. comm.). Consequently, grazing on the Bassam Allotment is not currently known to impact the caddisfly or its habitat.

The Chubb Park Allotment lies immediately upstream of Trout Creek Spring. The cattle on the Chubb Park Allotment cannot get to Trout Creek Spring because of allotment fences and cattle guards (USFS 2009, p. 5). Consequently, direct impacts to the caddisfly and its habitat do not occur from cattle on the Chubb Park Allotment. However, grazing in this allotment in the upper portion of the Trout Creek drainage has the potential to impact the caddisfly's habitat downstream through vegetation removal, erosion, and subsequent downstream sedimentation in the caddisfly habitat. The Trout Creek drainage becomes ephemeral within 300 m (984 ft) above Trout Creek Spring (Flint and Herrmann 1976, p. 895; USFS 2009, p. 5), and may occasionally run during spring snowmelt or large thunderstorms (Ireland 2009, p. 2). These irregular seasonal flows in combination with increased vegetation and recently implemented improvements in grazing management (as discussed below) likely reduce the amount of sediment reaching the caddisfly habitat. However, we are not aware of any measurements of sediment deposition in the Trout Creek Spring habitat.

The Chubb Park Allotment has split ownership between the USFS, CSLB, and private lands, with roughly three-quarters in USFS ownership (USFS 2008a, p. 53). From 1996 through 2008, 146 total cow/calf pairs were permitted on the Chubb Park Allotment for 153 days or 983 Animal Unit Months (AUMs) (USFS 2009, p. 6; USFS 2010, p. 1). In 2009, the USFS and CSLB reduced the AUMs by shortening the grazing period to 41 days and allowing 410 cow/calf pairs to graze for a new total of 740 AUMs (USFS 2009, p. 6). The private landowner elected to not graze due to drought and, along with the USFS and CSLB, rested the Chubb Park Allotment for 5 years from 2003-2007 (USFS 2010, p. 1). An electric fence erected for 8 km (5 mi) along Trout Creek upstream of the spring prior to the 2009 grazing season now prevents cattle from accessing this stretch of Trout Creek (USFS 2009, p. 5). However, the USFS may adjust the fence as they determine appropriate to meet the desired conditions (USFS 2010, p. 2). Currently all the pastures in the allotment are moving toward or meeting desired conditions (USFS 2010, p. 1). Herbaceous riparian vegetation appeared lush in July 2009 (Ireland 2009, p. 2), and the cattle did not enter the fenced-off portion of the riparian zone (USFS 2009, p. 4). An increase in vegetative cover in the 8 km (5 mi) stretch of Trout Creek should limit sediment deposition downstream during snowmelt and thunderstorm events.

The USFS installed a well in June 2005 about 8 km (5 mi) upstream of Trout Creek Spring that pipes water to a large holding tank, then into seven float-controlled livestock tanks to draw the livestock away from riparian areas (USFS 2009, p. 6). This action may limit grazing in the riparian areas, thereby further retaining vegetation and reducing sedimentation, but may negatively impact water quantity (see "Dewatering of Spring Habitat" section below).

The USFS (2009, pp. 1-5) provided present-day photos, as well as historical information and photos of Trout Creek in 1921 and 1933, that showed extensive erosion both upstream and downstream from Trout Creek Spring from excessive grazing and logging. Based on the photos, the sediment loads in the 1920s and 1930s almost certainly exceeded present-day loads. This means that the caddisfly was either able to withstand the sediment loads, the sediment was not deposited in the spring (allowing the caddisfly to survive), or conditions have improved since then to the extent that the caddisfly was able to colonize or recolonize Trout Creek Spring. Because cattle on the Bassam and Fourmile Allotments do not graze in the known

caddisfly habitat and grazing on the Chubb Park Allotment appears to be managed adequately, it is unlikely that cattle grazing on any of the three allotments under current and adaptive management causes sedimentation or direct impacts to the caddisfly or its habitat. The USFS has committed to adaptive management of the Chubb Park Allotment, which means that grazing or other actions may be adjusted based on observation of impacts on the ground or through scientific monitoring of conditions or both (USFS 2008b, p. 4). Adaptive management in the Chubb Park Allotment includes a variety of actions that can be categorized as adjusting grazing duration and timing, rotating cattle in different pastures, fencing cattle out of riparian areas, drawing cattle away from riparian areas with water developments, adjusting stocking rates, and managing vegetation (USFS 2008a, p. 28).

No grazing occurs at High Creek Fen. The closest grazing occurs upstream about 1.5 km (0.9 mi) (Pague 2009, pers. comm.). Cattle also graze about 0.4 km (0.6 mi) downstream (easterly) and about 0.8 km (0.5 mi) north and south of the fen (Pague 2009, pers. comm.). No grazing-related impacts to the fen have been noted to date (Pague 2009, pers. comm.) or are expected in the future (Pague 2009, pers. comm.).

The Valles Caldera National Preserve (VCNP) is approximately 36,000 ha (89,000 ac) (Valles Caldera Trust 2009, p. 16), with 31 percent of the area suitable for grazing, including the area near where the adult caddisfly was found (Valles Caldera Trust 2009, pp. 75, 77). Historically, a large number of sheep and cattle were grazed on VCNP, but only cattle have been grazed for the last 40 years (Valles Caldera Trust 2009, p. 61). Historically, cattle and sheep grazing had an impact on Jaramillo Creek drainage, but since VCNP was created conditions have improved. Beginning in 2001, shortly after the VCNP was created, the number of cattle was reduced by about 93 percent (Parmenter 2009a, pers. comm.). Approximately 550 adult cows and 250 calves were grazed in 2009, and this level is expected to continue in the future (Parmenter 2009b, pers. comm.). Cattle were grazed in the pasture surrounding the caddisfly location in 2008, but it was closed to grazing and herding in 2009 (Parmenter 2010, pers. comm.). The pasture is expected to remain closed to grazing and herding in the future (Parmenter 2010, pers. comm.).

The primary native grazer in the VCNP is elk, with numbers of resident elk typically about 2,500 (Valles Caldera Trust 2009, p. 22). Seven thousand free-roaming elk live in the Jemez Mountains, which surround VCNP (Valles Caldera Trust 2009, p. 22). However, no measureable impact from elk grazing occurs in the area where the caddisfly was captured (Parmenter 2009b, pers. comm.).

Stream condition in the VCNP appears to be improving. A proper functioning condition analysis was done in 2000 and 2006 to assess stream condition in VCNP (Valles Caldera Trust 2009, p. 68). Determining proper functioning condition includes analysis of vegetation, soils, geology, and hydrology but does not include water quality assessment (BLM 1998, pp. 2, 4). Four of five sections of the creek were rated as being in proper functioning condition in 2006, versus two of five in 2000 (Valles Caldera Trust 2009, p. 68). The other sections (three of five in 2000 and one of five in 2006) were rated as being on an upward trend. The section around the adult caddisfly capture site was rated as being in proper functioning condition (McWilliams 2006, pp. 7, 8, 17). Overall, 75 percent of the streams in VCNP are in proper functioning condition (Parmenter 2009a, pers. comm.). However, most of the streams on VCNP have water of quality that is considered impaired by State standards, primarily as a result of turbidity and temperature (Parmenter 2009a, pers. comm.). Unfortunately, temperature at the Jaramillo Creek caddisfly capture site is not known. Jaramillo Creek was one of the streams rated as non-impaired overall in 2000, and was used as a reference stream during a benthic survey (Valles Caldera Trust 2009, p. 67). Jaramillo Creek had the highest number of taxa (31) and the highest diversity of aquatic insects of any creek in VCNP (Valles Caldera Trust 2009, p. 67). Therefore, we believe that livestock and elk grazing are not impairing water quality in a manner that threatens the Susan's purse-making caddisfly in Jaramillo Creek.

In summary, the restricted distribution and narrow habitat requirements of Susan's purse-making caddisfly elevate the likelihood that grazing-induced impacts would have a negative impact on this species. Despite this possibility, no grazing impacts are apparent in the immediate vicinity of Trout Creek Spring. Additionally, there is no evidence that sedimentation from grazing in the Chubb Park Allotment is currently affecting Trout Creek Spring and effects are unlikely in the foreseeable future, considering current and adaptive management commitments. Grazing does not occur around the High Creek Fen caddisfly occurrence. There is no evidence that grazing at VCNP has impacted the caddisfly's habitat in recent years. We believe that grazing will continue for at least the next 20 years on both the Chubb Park Allotment and VCNP. However, we do not expect grazing to impact the caddisfly in the foreseeable future at either High Creek Fen or VCNP due to management practices currently in place and expected to continue in the future (Pague 2009, pers. comm.; Parmenter 2009a, pers. comm.; Parmenter 2009b, pers. comm.; Parmenter 2010, pers. comm.; Valles Caldera Trust 2009). We find no credible evidence that grazing is a threat to Susan's purse-making caddisfly now or in the foreseeable future.

Hazardous Fuel Reduction Activities

The North Trout Creek Forest Health and Hazardous Fuel Reduction Project (North Trout Creek Project) (USFS 2007a) may impact Trout Creek Spring. The project is proposed to treat approximately 3,500 ha (8,700 ac) out of a 6,200-ha (15,300-ac) project area with salvage logging, thinning, and prescribed fire to reduce hazardous fuel loads (USFS 2007a, p. 1). The various components of the project are projected to take place over 5 to 7 years dependent on funding (USFS 2007a, p. 13). The closest proposed action under the project is about 10 km (6 mi) north of Trout Creek Spring. An additional timber sale project (Ranch of the Rockies Project) could result in 35 ha (86 ac) of impacts in the Trout Creek Pass area 5 to 8 km (3 to 5 mi) upstream of Trout Creek Spring (USFS 2007b, pp. 1-3). This timber sale project involves skidding and storing live and dead trees and piling the resulting slash. Although the proposed North Creek project location is at least 10 km (6 mi) from caddisfly habitat, roads and prescribed fire related to logging and hazardous fuels reduction could potentially impact Susan's purse-making caddisfly as described in the "Logging Roads" and "Prescribed Fire" sections below.

Very few or no harvestable trees occur at High Creek Fen, so logging there is not a potential threat. From 1935 to 1972, logging (particularly clear-cut logging) was conducted on VCNP (Valles Caldera Trust 2009, p. 164). Logging ceased in 1972, as result of a lawsuit (Valles Caldera Trust 2009, p. 164). Only minor selective logging has occurred since 1972, and it is expected that some thinning of second growth forests will continue to occur to prevent massive wildfires. However, no commercial logging is proposed (Parmenter 2009b, pers. comm.). There may be higher spring snowmelt from

thinning of trees, and possibly increased sedimentation, but the Science and Education Director of VCNP believes there should be minimal impact to the caddisfly (Parmenter 2010, pers. comm.). We do not expect any impacts to the caddisfly or its habitat from logging in the High Creek Fen and VCNP areas.

Logging Roads

Disturbance associated with logging road construction and operation is a significant source of sediment load in streams (Cederholm *et al.* 1980, p. 25). Unpaved permanent or temporary roads are a primary source of sediment in forested watersheds (Vora 1988, pp. 117, 119; Sugden and Woods 2007, p. 193). Similar to the effects of livestock grazing on aquatic habitats, roads remove vegetation, compact soil (reducing water infiltration), increase erosion and sedimentation, increase the amount of surface runoff and change its pattern, introduce contaminants, and facilitate the spread of invasive plant species (Anderson 1996, pp. 1-13; Forman and Alexander 1998, pp. 210, 216-221; Jones *et al.* 2000, pp. 77-82; Trombulak and Frissell 2000, pp. 19, 24; Gucinski *et al.* 2001, pp. 12-15, 22-32, 40-42; Angermeier *et al.* 2004, pp. 19-24). The cumulative effects on streams include increases in siltation, increases in nonpoint source pollution, increases in water temperatures, and decreases in dissolved oxygen levels. Since the caddisfly appears to inhabit springs with high dissolved oxygen, relatively low and stable water temperatures, and low trace metals (Flint and Herrmann 1976, p. 897), we investigated the possibility that the cumulative effects of roads could threaten the caddisfly.

The North Trout Creek Project would not create new permanent roads, but would allow creation of about 10 km (6 mi) of new temporary roads and reopen 16 km (10 mi) of existing closed roads (USFS 2007a, p. 83). The sediment yield from construction of temporary roads and reopening of closed roads associated with the fuel reduction project is estimated to be 41.2 tons/year, with 9.3 times greater sediment load in the Trout Creek watershed predicted from the action versus no action alternatives (USFS 2007a, p. 83). However, it is uncertain if the sediment will be deposited at, and affect the caddisfly or its habitat in, Trout Creek Spring, especially with actions described above improving the riparian area upstream of Trout Creek Spring. The riparian vegetation in the ephemeral upper Trout Creek channel will likely act as a sediment trap, thereby limiting the rate and average amount of sediment deposited in Trout Creek Spring. Since activities under the fuel reduction project have not yet occurred, it is presently unknown what effects the predicted sediment increase will have on Susan's purse-making caddisfly.

Historic timber activities resulted in about 50 percent of VCNP being logged, with over 1,600 km (1,000 mi) of 1960s-era logging roads (Valles Caldera Trust 2009, p. 164) being built in winding and spiraling patterns around hills (Valles Caldera Trust 2009, pp. 59-60). The logging resulted in accelerated run-off and erosion that is still evident or active to some extent including continued erosion in gullies and roads immediately adjacent to Jaramillo Creek (Parmenter 2010, pers. comm.; Valles Caldera Trust 2009, p. 60). However, the run-off has been reduced by natural revegetation of grasses, forbs, and small trees and only minimal administrative use of logging roads (Parmenter 2010, pers. comm.). Jaramillo Creek has improved with better management and is currently considered in good ecological condition (Valles Caldera Trust 2009, p. 68). Assuming that the adult caddisfly found next to Jaramillo Creek was hatched from nearby larval habitat, sedimentation from logging roads does not appear to be a threat to Susan's purse-making caddisfly habitat in the area now or in the foreseeable future.

Fire

In addition to logging, the North Trout Creek Project involves prescribed burns (USFS 2007a, map 2.3). Regular burns conducted around the area of Trout Creek Spring could have a negative impact on stream quality, because burning has been shown to affect aquatic habitats and watersheds in a variety of ways (Neary *et al.* 2005, pp. 1-250). For example, mechanical site preparation and road construction needed to conduct prescribed burns can lead to increased erosion and sediment production, especially on steep terrain (Neary *et al.* 2005, pp. 54, 56, 58). Removal of leaf litter from the soil surface through burning can lead to reduced water infiltration into the soil, increasing the amount of surface runoff into streams. Additionally, ash depositions following a fire can affect the pH of water. Negative impacts may be exacerbated by burning slash piles, since the fire intensity is greater when the fuel is piled in a small area, which can have a stronger impact on the underlying soil (Neary *et al.* 2005, p. 83). No prescribed burns will occur immediately around or upstream of Trout Creek Spring, but burns higher up in the Trout Creek watershed could add sediment from the burning and thinning activities (USFS 2007a, map 2.3). The proposed Ranch of the Rockies timber sale does not involve burning (USFS 2007b, pp. 1-3). Of course, natural wildfires could have the same effect as the prescribed burns or a more significant effect if burn intensity is high. However, the thinning and prescribed burning program is intended to reduce fuel loads to prevent high intensity wildfires.

Prescribed burning does not take place at High Creek Fen (Schulz 2009, pers. comm.). At VCNP, natural fire patterns were disrupted in the late 1800s with the introduction of livestock, human activities, and intentional fire suppression (Valles Caldera Trust 2009, pp. 96-97). Natural fire events have not occurred in VCNP in many years. Prescribed fire at VCNP has been limited, with only one burn in 2004 that is described as creating a positive vegetation response (Valles Caldera Trust 2009, p. 97). A prescribed fire plan is expected to be developed (Valles Caldera Trust 2009, p. 97), as there is concern for massive fires to occur (Parmenter 2009b, pers. comm.). Massive fires uphill or upstream of the caddisfly capture location would likely have a much greater effect on the caddisfly as there would be less vegetation to hold soil in place. However, thinning of secondary growth should help prevent massive fires in the future (Parmenter 2009b, pers. comm.).

In summary, proposed logging activities and prescribed burning activities in the Trout Creek Spring watershed could potentially have negative impacts on the caddisfly by increasing the sediment load in Trout Creek. None of these activities is occurring at present, so there is no evidence of immediate impacts. If sediment transport does increase as a result of future logging and burning activities, it is unknown if the sediment will be deposited in Trout Creek Spring to an extent where it will affect the caddisfly. Sediment transport and deposition to the caddisfly habitat in the foreseeable future may be ameliorated by increased vegetation in the upper Trout Creek watershed under current grazing management. The VCNP is still experiencing some erosion from logging-related roads developed before 1972, but Jaramillo Creek is in good ecological condition and continues to improve. Since the adult caddisfly has limited dispersal, suggesting larval habitat is nearby, the caddisfly's existence in Jaramillo Creek indicates that sedimentation effects from logging roads do not appear to be having significant

impacts. Erosion and sedimentation is not expected to be a threat in the foreseeable future with increased vegetation, minimal logging, and minimal logging road use.

Dewatering of Spring Habitats

Reduction of stream flow due to increased groundwater use and water diversion can have a dramatic impact on stream habitat and associated macroinvertebrate communities. Artificial flow reductions frequently lead to changes, such as decreased water depth, increased sedimentation, and altered water temperature and chemistry, whichh can reduce or influence macroinvertebrate numbers, richness, competition, predation, and other interactions (Dewson *et al.* 2007, pp. 401-411).

The development of springs in the upper Trout Creek watershed could affect the hydrology of remaining springs and streams, in addition to reducing potential new habitat for Susan's purse-making caddisfly colonization. Trout Creek Spring itself is not currently proposed for livestock water development, but a well installed in 2005 pumps water from the upper ephemeral part of Trout Creek (USFS 2008a, Appendix 3 Chubb Park C&H, p. 5). The well is 70 m (220 ft) deep and diverts 15 liters (4 gallons) per minute, but it is not known what percentage of the available water this constitutes (USFS 2009, p. 6). Another six developments are planned in ephemeral tributaries to Trout Creek, consisting of water piped from six seeps to nearby stock tanks (USFS 2008a, Appendix 1 Chubb Park C&H Range Improvements, p. l). The exact groundwater source or sources for Trout Creek Spring are unknown, and no study was conducted on the existing well to determine if it is capturing groundwater from a tributary to Trout Creek Spring (USFS 2008c, p. 34). Trout Creek Spring discharge will be measured twice yearly to determine if water use in Chubb Park is affecting caddisfly habitat (USFS 2008a, p. 43). The USFS has not identified what actions it will take if spring discharge is found to be less than previous years (USFS 2010, p. 2).

High Creek Fen is part of a 464-ha (1,147-ac) preserve owned and managed by TNC. Park County, where the preserve is located, has experienced significant population increases since the 1990s (Miller and Ortiz 2007, p. 2). Population growth in this area is accompanied by an increased demand for fresh drinking water. In 2000, 89 percent of the population of Park County received water from groundwater sources (Miller and Ortiz 2007, p. 2). The area surrounding High Creek Fen is currently being protected, but the fen itself is fed by groundwater sources. Sustained or increasing groundwater removal of water sources for the fen could have a deleterious effect on the hydrology of the fen and the invertebrate species it supports, including Susan's purse-making caddisfly.

However, we have no information to quantify the magnitude or temporal aspect of potential effects from groundwater withdrawal. TNC believes the water sources for the fen are fairly secure because there are conservation easements to the west (upstream) of the fen on private land, and water use in a sub-development around Warm Springs uses water that does not appear to be supporting High Creek Fen (Schulz 2009, pers. comm.). Additionally, the CSLB and Colorado Natural Areas Program (CNAP) signed an article of designation in 2001 to conserve 972 ha (2,401 ac) of CSLB land on the north side of the fen, and land on Black Mountain to the west of the fen, for the protection of the land and at least one water source (CNAP 2001, pp. 1-7). The land is included as a State Natural Area under CNAP.

The VCNP contains 136 earthen stock ponds with about 30 percent of the ponds failing and causing erosion and sedimentation (Valles Caldera Trust 2009, pp. 24, 93). However, only two to four appear to be in the Jaramillo Creek drainage, and the amount of sedimentation they cause is minor (Parmenter 2009b, pers. comm.). The stock ponds capture snowmelt and rainwater and do not require water delivery from streams (Parmenter 2009b, pers. comm.). No water is diverted from Jaramillo Creek (Parmenter 2009b, pers. comm.), and no additional water use is expected in the foreseeable future in VCNP (Parmenter 2009c, pers. comm.).

In summary, the restricted distribution and narrow habitat requirements of Susan's purse-making caddisfly make it possible that human-induced alterations in stream hydrology and water chemistry, such as what could occur from dewatering of spring habitats, would have a negative impact on this species. Although groundwater development in the areas around caddisfly habitat has the potential to impact springs and streams, we do not have any data showing that quantity of water has been lowered to date. Consequently, the information that we do have does not indicate that dewatering is currently occurring and impacting caddisfly habitat or that it will impact the caddisfly in the foreseeable future.

Roads

In addition to roads associated with hazardous fuel reduction projects as described above, Trout Creek Spring may be impacted by Highway 285 and County Road 309 (USFS 2007a, map 2.3). Highway 285, which receives heavy traffic, runs within 30 m (100 ft) of Trout Creek Spring on the eastern side of the spring. Roads accumulate a variety of contaminants including brake dust, heavy metals, and organic pollutants, which can be carried into streams by overland runoff (Forman and Alexander 1998, pp. 219-221; Trombulak and Frissell 2000, pp. 19, 22-24; Gucinski *et al.* 2001, pp. 40-42). Highway 285 receives a sand and 3-percent road salt mixture as a wintertime deicer (Cady 2009, pers. comm.). Based on the condition of vegetation around the spring, there is no indication of any effects from the sand/salt mixture (Ireland 2009, pp. 1-2). County Road 309, which is immediately above the spring on the west side, receives occasional snow plowing for a short distance up to a private residence (Gaines 2009b, pers. comm.) and also may occasionally get graded, which can increase the rate of erosion and deliver increased silt loads to Trout Creek Spring (Gucinski *et al.* 2001, pp. 12-15). However, there is no recent information on water quality or sedimentation at Trout Creek Spring to assess whether these factors are impacting Susan's purse-making caddisfly habitat.

Highway 285 crosses High Creek on the western side of High Creek Fen. There also is a little-used dirt access road about 300 m (938 ft) north of High Creek Fen. Neither the highway nor the dirt road appears to be causing impacts to the caddisfly's habitat, as water quality appears good (Cooper 1996) and an adult caddisfly and pupae were found there in 2009 (Ireland 2009, p. 1; Ruiter 2009b, pers. comm.).

One maintained dirt road crosses Jaramillo Creek next to the collection site in VCNP and continues north on the eastern side of the creek for about 2.4 km (1.5 mi). It is unknown how much sediment this contributes to the creek, but it may contribute some. This road connects with another approximately 2.4 km (1.5 mi) upslope from the caddisfly capture site. The second follows upper Jaramillo Creek for about 5 km (3 mi) and deposits sediment into the creek during rainstorms (Parmenter 2009b, pers. comm.). These roads are not open in the winter and no salt, chemicals, or herbicides are used along them (Parmenter 2009b, pers. comm.), so road contaminants are not an issue

around the known caddisfly location in VCNP.

In summary, the restricted distribution and narrow habitat requirements of Susan's purse-making caddisfly make it possible that road contaminants could have a negative impact on this species. However, the available evidence does not support a conclusion that roads in and near Susan's purse-making caddisfly habitat are negatively impacting water quality or habitat at present or will do so in the foreseeable future.

Recreation

Population growth in central Colorado has led to increased numbers of recreational users. The population of Chaffee County increased 28.1 percent from 1990 to 2000, with much of the growth occurring in unincorporated areas, and the population of Colorado is expected to increase by about 50 percent within the next 20 to 25 years (Chaffee County Comprehensive Plan 2000, p. 10). A study of outdoor recreation trends in the United States found increases in participation in most of the activities surveyed, which included bicycling, primitive or developed-area camping, bird watching, hiking, backpacking, and snowmobiling (Cordell *et al.* 1999, pp. 219-321). Additionally, on the national level, off-road vehicle (ORV) usage has risen substantially. The number of people who reported engaging in ORV activities rose by 8 million individuals between 1982 and 1995, and an increase of 16 percent nationally is anticipated during the next 50 years (Bowker *et al.* 1999, pp. 339-340; Garber-Yonts 2005, p. 30). ORV use can negatively impact conditions in riparian areas through damage to riparian vegetation and stream banks, leading to increased sedimentation.

ORV impacts have been documented at Trout Creek Spring (USFS 2007c, pp. 2-3). However, ORV use is restricted to existing roads in the Trout Creek Spring/Chubb Park area (USFS 2010, p. 2). The likelihood of future ORV use impacting the caddisfly's habitat at Trout Creek Spring is low due to fences above and below the spring as well as steep slopes down to the spring. ORV use in the Chubb Park Allotment could contribute sediment to Trout Creek through vegetation destruction and erosion, but road-restricted ORV use should greatly limit ORV-caused sedimentation.

Damage to Trout Creek Spring also is possible from water withdrawal by campers (USFS 2007c, p. 2). Increased human passage to the spring to obtain water could damage the riparian zone and disturb habitat. However, the proximity to Highway 285, steep slopes off of County Road 309, and open, narrow riparian zone limits the desirability for camping at the spring. People may occasionally go down to Trout Creek Spring proper for water, but if so, this occurrence appears to be limited as no sign of trampled vegetation or other impacts were evident during the July 2009 site visit. People also may use the "parking area" on the downstream side of the Highway 285 bridge to obtain water from Trout Creek, to fish, or to temporarily use the area for other purposes. However, the impact of people using the area below the bridge is likely minimal or non-existent since the caddisfly has only been collected upstream between the bridge and spring (Flint and Herrmann 1976, p. 898; Herrmann 2010, pers. comm.). More specimens of another caddisfly, *O. logana* (no common name), were collected at the bridge site than at the spring. Consequently, Flint and Herrmann (1976, p. 898) hypothesized that *O. logana* replaces Susan's purse-making caddisfly in Trout Creek as it gets farther away from the spring. Additionally, Herrmann (2010, pers. comm.) has never collected the caddisfly downstream of the bridge.

High Creek Fen is accessible to the public, but recreation of any kind is not known to be a threat (Schulz 2009, pers. comm.). The VCNP allows public access, with thousands of visitors annually (Valles Caldera Trust 2009, p. 142). However, VCNP uses reservations and a lottery to manage popular recreation activities or limits events to certain days and times (Valles Caldera Trust 2009, p. 212). Recreation is monitored, and no impacts from recreational activities have been noted in caddisfly habitat (Parmenter 2009b, pers. comm.). No ORV use is allowed in VCNP (Parmenter 2009c, pers. comm.). An environmental impact statement for public access and use is being prepared (Parmenter 2009b, pers. comm.).

In summary, although recreation is growing nationwide, the available information does not support a conclusion that any of the sites inhabited by Susan's purse-making caddisfly are being negatively impacted by recreational activities or that they will be in the foreseeable future.

Global Climate Change

The effects of global climate change are being assessed in North America and throughout the world, and changes in precipitation patterns, stream hydrology, and bloom time have already been observed. Stream flows decreased by about 2 percent per decade across the last century in the central Rocky Mountain region (Rood *et al.* 2005, p. 231).

Effects of global climate change are anticipated to include warming in the western mountains, causing snowpack and ice to melt earlier in the season (Field *et al.* 2007, pp. 627, 632, 635). These changes could lead to both increased flooding early in the spring, and drier summer conditions, particularly in the arid western areas, which rely on snowmelt to sustain stream flows. Spring and summer snow cover has already been documented as decreasing in the western United States, and drought has become more frequent and intense (Intergovernmental Panel on Climate Change (IPCC) 2007, pp. 8, 12). Major hydrologic events, such as floods and droughts, are projected to increase in frequency and intensity (IPCC 2007, p. 18). Erosion also is projected to increase as the result of a combination of factors, such as decreased soil stability from higher temperatures and reduced soil moisture, and increases in winds and high intensity storms (IPCC 2007, pp. 12, 14, 15, 18). However, IPCC (2007) data can only predict on a regional scale and are not predictive of conditions at specific sites. Ray *et al.* (2008) predict that Colorado will warm by about 1 degree Celsius (°C) (2.5 degrees Fahrenheit (°F)) by 2025 and by about 2 °C (4.0 °F) by 2050. Most of the observed snowpack loss in Colorado has occurred below 2,500 m (8,200 ft) with snowpack loss above this elevation predicted at between 10 and 20 percent (Ray *et al.* 2008). With the lowest known caddisfly site in Colorado (Trout Creek Spring) occurring at 2,750 m (9,020 feet), the chance of effects from hydrological change and a warming climate is lessened.

There is evidence that the temperature has been rising at VCNP since 1914 (Parmenter 2009a, pers. comm.; Parmenter 2009b, pers. comm.) and that precipitation has been dropping (Parmenter 2009b, pers. comm.). Average annual temperatures at Jemez Springs, New Mexico, which is about 16 km (10 mi) south of VCNP, rose from about 10.3 °C (50.5 °F) in 1914 to 11.7 °C (53 °F) in 2005 (Parmenter 2009b). The mean January temperature rose from about 0 to 1 °C (32 to 34 °F) during this time period (Parmenter 2009b). The mean July temperature increase stands out as it increased from about 20.6 to 23.1 °C (69 to 73.5 °F) from 1914 to 2005 (Parmenter 2009b). The average annual precipitation at Jemez Springs decreased from about 46 centimeters (cm) (18 inches (in)) to just over 38 cm (15 in) from 1914 to 2005 (Parmenter 2009b). In 2006, following a

very dry winter and spring, Jaramillo Creek went dry for 30 days (Valles Caldera Trust 2009, p. 68). This was the driest period in 112 years of records (Parmenter 2009a, pers. comm.). However, the caddisfly was found in 2008 on Jaramillo Creek. Consequently, Susan's purse-making caddisfly larvae may survive in springs that had some water in them in 2006, or the caddisfly could have recolonized Jaramillo Creek since 2006 from some nearby refuge or drainage that was not dry in 2006. We are not aware of any historical temperature or precipitation data that have been compiled or analyzed for the Trout Creek area or High Creek Fen area.

In summary, based on predictions from IPCC over the next 40 years, the western United States is predicted to get warmer and dryer and have altered hydrologic cycles. Despite these predicted changes, the caddisfly does appear to have the ability to adapt to warmer and drier conditions from observations of weather patterns around the VCNP site. Furthermore, the high elevations that the caddisfly occurs at in Colorado will help shield it from climate change effects.

Summary of Factor A

Although we have identified potential impacts to the caddisfly from livestock grazing, hazardous fuel reduction activities, logging roads, prescribed fire, current and proposed water development, road sedimentation and contamination, and recreation, the available information does not support a conclusion that these actions are currently impacting the caddisfly. Current management practices and restrictions appear to adequately control these potential impacts so that they do not pose a substantial threat to the caddisfly. Additionally, there is currently no reliable way to predict if sediment and upstream water development will affect the caddisfly in the future.

Climate change could pose a problem to Susan's purse-making caddisfly if water levels, water temperature, or other habitat variables that affect the caddisfly change as a result of global warming. However, there is currently no model or supporting information that can reliably or credibly predict climate change effects at a local enough scale to ascertain whether climate change is, or will become, a threat to Susan's purse-making caddisfly. Furthermore, despite an extremely dry year in 2006, the caddisfly was able to persist in or recolonize the Jaramillo Creek area, indicating that the species can survive with at least occasional dry years and perhaps with decreased precipitation over a longer period. Additionally, the high elevation of the Colorado sites are expected to shield the caddisfly from potentially negative consequences of warmer and drier conditions within the foreseeable future. The available data do not support the conclusion that potential threats are currently impacting Susan's purse-making caddisfly habitat or that they will impact the caddisfly habitat in the foreseeable future. Therefore, we conclude that the best scientific and commercial information available indicates that Susan's purse-making caddisfly is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Susan's purse-making caddisfly is only known to occur at three sites, so its rarity may pose a collection threat. However, the only people known to collect the caddisfly in any number are Dr. Scott Herrmann and his students in 1974 and 1975 (Flint and Herrmann 1976, p. 898). Because of the high fecundity of insects, their collection typically poses little threat to their populations (Xerces Society *et al.* 2008, p. 15), but it is nonetheless possible to overcollect a species that occurs in relatively isolated habitat areas. We do not have evidence of any collections since 1975 at Trout Creek Spring. Other than a couple specimens collected during the July 2009 field trip at High Creek Fen (2009, p. 2) and a subsequent visit in August 2009 (Ruiter 2009b, pers. comm.), we do not have evidence of any other collections since 1995 at High Creek Fen.

Summary of Factor B

There is no evidence that overutilization has been a threat to Susan's purse-making caddisfly. Further, even though small collections will likely continue to occur absent any permitting requirements, we do not believe these collections will constitute a threat to the species. Therefore, we conclude that the best scientific and commercial information available indicates that Susan's purse-making caddisfly is not now, nor in the foreseeable future, threatened by overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Neither disease nor predation is known to be a threat to Susan's purse-making caddisfly. Given only three known locations and unknown population sizes, it is possible that disease or predation could pose a threat in the future. However, we have no evidence to suggest that disease or predation will be a threat to the species. Consequently, we conclude that the best scientific and commercial information available indicates that Susan's purse-making caddisfly is not now, nor in the foreseeable future, threatened by disease or predation to the extent that listing under the Act as a threatened or endangered species is warranted.

D. The Inadequacy of Existing Regulatory Mechanisms

Federal

Susan's purse-making caddisfly is listed as a U.S. Forest Service (USFS) Region 2 sensitive species (USFS 2007c, pp. 1-3). The Forest Service Manual (FSM) has direction for management and conservation of sensitive species (FSM 2670.31-2670.32). The FSM states that the USFS will: (1) Integrate available scientific information, including Regional species evaluations, species and ecosystem assessments, and conservation strategies, into USFS planning and implementation; (2) Conduct appropriate inventories and monitoring of sensitive species to improve knowledge of distribution, status, and responses to management activities, coordinating efforts within the Region and with other agencies and partners where feasible; and (3) Analyze and manage for sensitive species in a manner to realize efficiencies of multi-species and ecosystem management approaches.

Potential impacts to Susan's purse-making caddisfly were not addressed in planning documents for the North Trout Creek Project (USFS 2007a, p. 48) or the Ranch of the Rockies Timber Sale Project (USFS 2007b, pp. 1-3). The USFS is not bound to apply sensitive species policies if an ongoing project's Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*) was written prior to designation of a sensitive species, but the USFS could choose to apply sensitive species policies to those projects (Gaines 2010, pers. comm.). As discussed under Factor A (Livestock Grazing), the Final Grazing EA did address the caddisfly (USFS 2008a). The Final Grazing EA states that Trout Creek Spring discharge will be measured twice yearly to determine if up-valley water use (in Chubb Park) is affecting the caddisfly's habitat (USFS 2008a, p. 43). The USFS does not currently know if a well upstream of the caddisfly's habitat used for cattle watering contributes to Trout Creek

Spring. However, to reduce water usage, the USFS put float valves on the stock tanks so that water only runs when the cows have lowered the water level in the tanks or when minor evaporative loss occurs (USFS 2008a, p. 108). If the float valves are not working, an overflow valve at the well will return water to the drainage upstream of Trout Creek. Additionally, when the cattle are not grazing in Chubb Park, the water will be turned off (USFS 2008a, p. 108). Grazing was conducted for only 41 days in fall 2009 (USFS 2009, p. 4), and desired vegetative utilization levels were not exceeded (USFS 2009, p. 4). An electric fence also was installed along 8 km (5 mi) of riparian habitat upstream of Trout Creek Spring that prevented grazing there (USFS 2009, p. 5). These actions illustrate that regulatory mechanisms can and are being implemented by the USFS.

The USFS assumes presence of the caddisfly in suitable habitat unless adequate surveys determine otherwise (USFS 2008a, p. 103). Although the USFS does not know what the desired conditions should be for the caddisfly, they are managing the riparian area around Trout Creek Spring with the desired future condition for suitable habitat for all aquatic species (USFS 2008a, p. 105). This includes:

- A riparian plant community that is meeting or moving toward at least a mid-seral class (a suite of vegetation that is in the middle of the natural succession process);
- The presence of healthy and self-perpetuating riparian plant communities;
- Compliance with State and Federal water quality standards;
- The presence of stable and well-vegetated shorelines with appropriate species;
- The presence of suitable habitat for viable populations of aquatic invertebrates; and
- The absence of upstream deplections that would reduce the Trout Creek Spring discharge.

The Valles Caldera National Preserve (VCNP) does not have specific regulations protecting the Susan's purse-making caddisfly, as the species was not known to occur there until June 2009 (Flint 2009b, pers. comm.). However, the occupied site lies within a national preserve created by the Valles Caldera Preservation Act of July 25, 2000. The VCNP was created "to protect and preserve the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the preserve, and to provide for multiple use and sustained yield of renewable resources within the preserve, consistent with this title" (VCPA sec. 105 [b]) (Valles Caldera Trust 2003, p. 47). As described above, the Preserve is federally owned but run by a nine member Board of Trustees (Valles Caldera Trust 2003, pp. 46-47). The VCNP Board of Trustees allows for public input in management decisions through public review of draft environmental assessments and a variety of other avenues (Valles Caldera Trust 2003, pp. 75-81). The multiple-use mandate does create the potential for conflicts with management of the caddisfly; however, it also provides wildlife protection and, based on recent information provided in Factor A, the Service finds that adequate regulatory mechanisms are being implemented to conserve the caddisfly.

For all projects on Federal land, or that are federally funded or authorized, an EA or environmental impact statement will be prepared under NEPA. Categorical exclusion documents also could be prepared under NEPA for projects if they are determined to be minor and would not affect rare or sensitive species. Therefore, because the caddisfly has been designated a sensitive species, NEPA documents can provide protection to the caddisfly by assessing impacts to the caddisfly and presenting actions to avoid or minimize any impacts. The Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*) also may provide indirect protection to the caddisfly. This law was written to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. States have authority over water rights. The USFS must comply with Federal, State, and local water quality laws and rules, coordinate actions that affect water quality with States, and control nonpoint source pollution (USFS 2008a, p. 24).

State

The Susan's purse-making caddisfly is not a State-protected species in either Colorado or New Mexico. Title 33, Article 1-102 of the Colorado Revised Statutes defines wildlife in Colorado as vertebrates, mollusks, and crustaceans; therefore, caddisflies are not eligible for protection by the State. Likewise, Chapter 17, Article 2 of the New Mexico Statutes does not include non-mollusk or crustacean invertebrates in its definition of wildlife.

The Colorado State Land Board (CSLB), a Colorado State government entity, owns about 1,215 ha (3,000 ac) in Chubb Park as part of the Chubb Park Allotment. The CSLB cooperates with the USFS and manages the land with the same grazing seasons as the USFS land and combines AUMs to manage the Chubb Park Allotment as a single allotment.

The CSLB also owns part of High Creek Fen and much of Black Mountain, which provides at least one source of water to High Creek Fen (Cooper 1996, p. 1803). The CSLB and Colorado Natural Areas Program (CNAP) designated 972 ha (2,401 ac) of land to the north of TNC-owned land and to the west on Black Mountain as a State Natural Area to help conserve land and water for the fen (CNAP 2001, pp. 1-7). In addition to the CSLB land, the CNAP also designated 464 ha (1,147 ac) of TNC-owned land in 1994 as the High Creek Fen State Natural Area (CNAP 1994, pp. 1-7). The 2001 designation was an addition to the High Creek Fen State Natural Area designation of 1994. The caddisfly was not listed as a reason for the designations, but the designations do help protect the caddisfly by limiting resource development and protecting water sources.

The Nature Conservancy

The Nature Conservancy (TNC) owns 464 ha (1,147 ac) of land and habitat for the caddisfly at High Creek Fen. The actual amount of Susan's purse-making caddisfly habitat protected on TNC land has not been calculated, nor is the extent of occupied habitat known on High Creek or within the fen proper. Additionally, TNC has facilitated several private land conservation easements (of unknown area) around and upstream of High Creek Fen for the fen's protection (TNC 2009, pp. 1-2). Although TNC is a not a regulatory agency and cannot enact State or Federal regulations, their primary mission is to protect native ecosystems. TNC's current management plan (TNC 1993, pp. 1-14) does not specifically mention protection of Susan's purse-making caddisfly, but general protections for the fen provide protection for the caddisfly by eliminating peat extraction and housing development in and around the fen and by managing the area to maintain a natural hydrologic and vegetative state. Consequently, the Service believes the High Creek Fen site is adequately protected.

Summary of Factor D

Susan's purse-making caddisfly is a USFS Sensitive Species. Despite the caddisfly not being addressed in the EAs for the North Trout Creek Project (USFS 2007a) or the Ranch of the Rockies Timber Sale Project (USFS 2007b), we believe that sensitive species

direction provided in the Forest Service Manual (FSM) (FSM 2670.31-2670.32) will continue to be followed under the EA for the Rangeland Allotment Management Planning in the Salida-Leadville Planning Area (USFS 2008a) and the Decision Notice and Finding of No Signficant Impact for the project (USFS 2008b). The project area for the Rangeland Allotment Management Planning in the Salida-Leadville Planning Area (USFS 2008a) includes the areas addressed in the North Trout Creek Project (USFS 2007a) and the proposed Ranch of the Rockies Timber Sale Project (USFS 2007b). Consequently, adequate regulatory mechanisms exist to protect the species and its habitat at Trout Creek Spring. If other locations of the caddisfly are discovered on USFS land, the sensitive species policies also would apply.

The CSLB cooperatively manages its lands above Trout Creek and at High Creek Fen with the USFS and TNC, respectively, so even though the State of Colorado does not recognize invertebrates as wildlife, cooperative grazing management provides adequate regulatory mechanisms around the known locations of the caddisfly. TNC and CSLB own a majority of the land around High Creek Fen, and the lack of development and the conservation of the land through State Natural Area designation and implementation of a habitat management plan help to protect the fen. The designation and management of VCNP provides adequate protection to the caddisfly site by preserving the land from housing development; limiting and managing recreational use, logging, road use, and domestic livestock use (thereby allowing natural revegetation); reducing sedimentation; and preserving water resources. We believe that these management plans and regulatory mechanisms provide conservation benefit to the species now and into the foreseeable future.

We conclude that the best scientific and commercial information available indicates that Susan's purse-making caddisfly is not now, or in the foreseeable future, threatened by inadequate existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Small Population Size and Stochastic Events

Since we do not know the caddisfly population size at any of the known locations, we considered whether small population size or rarity might pose a potential threat to the species. Small populations are generally at greater risk of extirpation from normal population fluctuations due to predation, disease, and changing food supply, as well as from stochastic (random) events such as floods or droughts (Xerces Society *et al.* 2008, p. 15). However, we do not consider rarity alone, without corroborating information regarding threats, to meet the information threshold indicating that the species may warrant listing. In the absence of information identifying threats to the species and linking those threats to the rarity of the species, the Service does not consider rarity alone to be a threat. Further, a species that has always had small population sizes or been rare, yet continues to survive, could be well-equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes. Consequently, that fact that a species is rare or has small populations does not necessarily indicate that it may be in danger of extinction now or in the foreseeable future. We need to consider specific potential threats that might be exacerbated by rarity or small population size.

Due to the presumed limited dispersal ability of Susan's purse-making caddisfly between the known populations, loss of genetic variability and reduced fitness due to inbreeding could occur (Bjjlsma *et al.* 2000, p. 502; Saccheri *et al.* 1998, p. 491; Xerces Society *et al.* 2008, p. 15). However, we could find no specific literature addressing genetic effects in caddisflies. Although low genetic variability and reduced fitness from inbreeding could occur, at this time we have no evidence that genetic problems are occurring. Based on the limited available information, and fact that the caddisfly has survived for an unknown number of years, we conclude that genetic variability and reduced fitness are not an imminent threat now or in the foreseeable future. Although we have only known of the species' existence since 1974 (Flint and Herrmann 1976), it has likely historically survived floods, drought, and other stochastic events. We do not believe that such stochastic events would eliminate all of the populations at one time or place the species at risk of extinction within the foreseeable future.

Further, with the discovery of the adult caddisfly at VCNP, the potential range of the caddisfly has expanded significantly. Although the USFS' Sensitive Species Form states that extensive surveys have taken place (USFS 2007c), species experts agree that more populations could exist, especially in light of the New Mexico discovery (Jacobi 2009, pers. comm.; Kondratieff 2010, pers. comm.; Ruiter 2010, pers. comm.).

Summary of Factor E

Although the limited distribution and presumably small size of the three populations of Susan's purse-making caddisfly could be a concern, there is no current evidence that the caddisfly is being impacted as a result of small population size or stochastic events. Consequently, we conclude that the best scientific and commercial information available indicates that Susan's purse-making caddisfly is not now, nor in the foreseeable future, threatened by other natural or manmade factors affecting the species' continued existence.

Finding

As required by the Act, we considered the five factors in assessing whether Susan's purse-making caddisfly 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, and other available published and unpublished information, and we consulted with recognized caddisfly experts, other Federal agencies, and non-governmental entities. On the basis of the best scientific and commercial information available, we find that Susan's purse-making caddisfly is not in danger of extinction (endangered) now, or likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, we find that listing Susan's purse-making caddisfly as a threatened or an endangered species is not warranted throughout all or a significant portion of its range at this time.

This species is only known from three locations, and there is limited scientific information available regarding its basic biology, life cycle, and habitat preferences. There is no available information regarding population sizes or trends at any of the known locations. Additional research and a species-specific survey effort are needed. We do have information regarding ongoing and potential future activities adjacent to each of the sites as described above.

Our finding is based on the best available information that does not

support a detrmination that any current activities are impacting the caddisfly or its known habitats, and on current management practices and protections that would limit or prevent possible negative impacts. Although there are projects proposed that could potentially impact occupied caddisfly habitats, especially from sedimentation and upstream water use that could reduce spring flows, we have no credible information as to the potential effects of the actions on the species or its habitat. There is evidence that the VCNP area is getting warmer and dryer. However, even if warmer and dryer trends continue, we do not know at what point climate change may negatively impact the caddisfly. The caddisfly apparently survived the driest period in 112 years at VCNP. Based on our current knowledge of the species, the fact that it occurs in mid- to high-elevation sites that appear less prone to climate change impacts, and the lack of local-scale predictability of climate change effects, we do not believe or have evidence that the species is threatened by climate change now or in the foreseeable future. We do not believe overutilization for commercial, recreational, or scientific use under Factor B is a threat to the species at this time. Neither disease nor predation under Factor C is known or expected to be a threat to the species. We believe adequate regulatory mechanisms under Factor D exist at the known locations to protect the caddisfly and its habitat. For Factor E, we do not consider rarity or small populations alone to be a threat; there must be some likely stressor acting on the species or its habitat that may affect the caddisfly's status such that the species may be threatened now or within the foreseeable future. The information we have does not indicate that the caddisfly is being impacted genetically or in any other way, as a result of small population size, or that it will become threatened or endangered in the foreseeable future due to stochastic events.

Distinct Vertebrate Population Segments

The species is not a vertebrate; therefore, the Service's Distinct Population Segment (DPS) policy does not apply. Thus, there are no population segments that qualify as a DPS under the Service's DPS policy.

Significant Portion of the Range

Having determined that Susan's purse-making caddisfly does not meet the definition of a threatened or endangered species, 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.

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, "The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range'" (USDI 2007c). That formal opinion informs our analysis that occurs below. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. However, if the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range as threatened or endangered under section 4(c)(1) of the Act.

To determine whether any portions of the range of Susan's purse-making caddisfly warrant further consideration as possible endangered significant portions of the range, we reviewed the supporting record for the status review done for this 12–month petition finding, with respect to the geographic concentration of threats and the significance of portions of the range to the conservation of the species. In this case, we first evaluated whether substantial information indicated (i) the threats are so concentrated in any portion of the species' range that the species may be currently in danger of extinction in that portion; and (ii) if so, whether those portions may be significant to the conservation of the species.

Our rangewide review of the species concluded that Susan's purse-making caddisfly is not endangered now or in the foreseeable future. As described above, to establish whether any areas may warrant further consideration, we reviewed our analysis of the five listing factors to determine whether any of the significant threats identified were so concentrated in any of the three known caddisfly populations, that some portion of the caddisfly's range may be in danger of extinction now or in the foreseeable future. We found that none of the potential threats evaluated in this rule act were specific to one population or range of the caddisfly. Based on our review of the record, the available information does not indicate that any of the potential threats we evaluated were so concentrated as to find that some portion of the caddisfly's range qualifies as endangered. As a result, we have determined that the best available data show that there are no portions of the range in which the threats are so concentrated as to place the species in danger of extinction now or in the foreseeable future. Because we find that Susan's purse-making caddisfly is not endangered in any portion of its range now or in the foreseeable future, we need not address the question of whether any portion may be significant.

Conclusion

Our review of the information pertaining to the five factors does not support the assertion that there are significant threats acting on the species or its habitat that have rendered Susan's purse-making caddisfly to be in danger of extinction or likely to become so in the foreseeable future, throughout all or

a significant portion of its range. Therefore, listing Susan's purse-making caddisfly as threatened or endangered under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, Susan's purse-making caddisfly to our Western Colorado Field Office (see **ADDRESSES**) whenever it becomes available. New information will help us monitor the caddisfly and encourage its conservation. If an emergency situation develops for the caddisfly, 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 Western Colorado Field Office (see **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Western Colorado Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 12, 2010

Daniel M. Ashe,

Deputy Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0908191244–91427–02]

RIN 0648–XV91

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2010 commercial summer flounder quota to the Commonwealth of Virginia. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective April 22, 2010 through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Management Specialist, 978–281–9257.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations.

North Carolina has agreed to transfer 84,150 lb (38,170 kg) of its 2010 commercial quota to Virginia. This transfer was prompted by summer flounder landings of 12 North Carolina vessels that were granted safe harbor in Virginia due to mechanical problems and severe weather conditions between January 20, 2010, and February 27, 2010. The Regional Administrator has determined that the criteria set forth in § 648.100(d)(3) have been met. The revised quotas for calendar year 2010 are: North Carolina, 3,382,502 lb (1,534,277 kg); and Virginia, 2,897,955 lb (1,314,490 kg).

Classification

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

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

Dated: April 21, 2010.

James P. Burgess,

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

[FR Doc. 2010–9725 Filed 4–22–10; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 75, No. 80
Tuesday, April 27, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[AMS–CN–10–0001; CN–10–001]

RIN 0581–AC99

User Fees for 2010 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2010 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2009. These fees are also authorized under the Cotton Standards Act of 1923. The 2009 crop user fee was $2.20 per bale, and AMS proposes to continue the fee for the 2010 cotton crop at that same level. This proposed fee and the existing reserve are sufficient to cover the costs of providing classification services for the 2010 crop, including costs for administration and supervision.

DATES: Comments must be received on or before May 12, 2010.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Comments may be submitted by mail to: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, Rm. 2637–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. All comments should reference the docket number and the date and the page of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the above office in Room 2637—South Building, 1400 Independence Avenue, SW., Washington, DC. Comments can also be reviewed on: *http://www.regulations.gov.* A copy of this notice may be found at: *http://www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Programs, AMS, USDA, Room 2637–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–3193, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 2009 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2009 user fee for classification services was $2.20 per bale; the fee for the 2010 crop would be maintained at $2.20 per bale; the 2010 crop is estimated at 14,500,000 bales);

(2) The fee for services will not affect competition in the marketplace;

(3) The use of classification services is voluntary. For the 2009 crop, 12,400,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service; and

(4) Based on the average price paid to growers for cotton from the 2008 crop of 0.5520 cents per pound, 500 pound bales of cotton are worth an average of $276 each. The proposed user fee for classification services, $2.20 per bale, is less than one percent of the value of an average bale of cotton.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–AC43.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

This proposed rule would maintain the user fee charged to producers for cotton classification at $2.20 per bale for the 2010 cotton crop. The 2009 user fee charged to was calculated using new methodology, as was required by section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). Prior to the change in the 2008 Farm Bill, the fee was determined using a user-fee formula mandated in the Uniform Cotton Classing Fees Act of 1987, as amended (Pub. L. 100–108, 728) (1987 Act). This formula used the previous year's base fee that was adjusted for inflation and economies of size (1 percent decrease/increase for every 100,000 bales above/below 12.5 million bales with maximum adjustment being ±15 percent). The user fee was then further adjusted to comply with operating reserve constraints (between 10 and 25 percent of projected operating costs) specified by the 1987 Act.

Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification

services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar per bale classed) is proposed for the 2010 cotton crop that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to four months of projected operating costs.

Extensive consultations regarding the establishment of the classification fee with U.S. cotton industry representatives were held during the period from September 2009 through January 2010 during numerous publicly held meetings. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were addressed in various industry-sponsored forums.

The user fee proposed to be charged cotton producers for cotton classification in 2010 is $2.20 per bale which is the same fee charged for the 2009 crop. This fee is based on the pre-season projection that 14.5 million bales will be classed by the United States Department of Agriculture during the 2010 crop year.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the cotton classification fee at $2.20 per bale.

As provided for in the 1987 Act, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910(b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National Database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would be maintained at $2.20 per bale.

The fee for returning samples after classification in § 28.911 would remain at 50 cents per sample.

A 15-day comment period is provided for public comments. This period is appropriate because it is anticipated that the proposed fees, if adopted, would be made effective for the 2010 cotton crop on July 1, 2010.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR part 28 is proposed to be amended to read as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $2.20 per bale.

* * * * *

Dated: April 22, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–9828 Filed 4–23–10; 4:15 pm]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2009–0017]

RIN 0584–AD95

Food Distribution Program on Indian Reservations: Amendments Related to the Food, Conservation, and Energy Act of 2008

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Food Distribution Program on Indian Reservations (FDPIR) regulations to conform FDPIR policy to the requirements included in the Food, Conservation, and Energy Act of 2008 (the Farm Bill) for the Supplemental Nutrition Assistance Program (SNAP). The proposed rule is intended to improve program service to applicants and participants and ensure consistency between FDPIR and SNAP. When determining eligibility for FDPIR, the proposed rule would permanently exclude combat pay from being considered income and eliminate the

maximum dollar limit of the dependent care deduction. The rule would also exclude from resource consideration household funds held in qualified education savings accounts identified in the Farm Bill and would exclude any other education savings accounts for which an exclusion is allowed under SNAP. The proposed rule would also clarify that the current resource exclusion for retirement accounts is restricted to the qualified retirement accounts identified in the Farm Bill, but that a resource exclusion would be allowed for any other retirement account for which an exclusion is allowed under SNAP. Additionally, the rule would clarify that the FDPIR regulations regarding income eligibility refer to the SNAP net monthly income standard, not the SNAP gross monthly income standard.

DATES: To be assured of consideration, comments must be received on or before June 28, 2010.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. You may submit comments, identified by RIN number 0584–AD95, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Preferred method; follow the online instructions for submitting comments on docket FNS–2009–0017.
- *Fax:* Submit comments by facsimile transmission to (703) 305–2420.
- *Mail:* Send comments to Laura Castro, Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the above address during regular business hours.

Comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Department will make the comments publicly available on the Internet via *http://www.regulations.gov.*

All written submissions will be available for public inspection at the address above during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laura Castro at the above address or telephone (703) 305–2662. A regulatory impact analysis has been prepared for this rule. You may request a copy of the analysis by contacting us at the above address, or by e-mail to *Theresa.Geldard@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Your written comments on this proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain your reasons for any change recommended. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (*see* **DATES**) will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) make it more or less clear?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled "Background and Discussion of the Proposed Rule" helpful in understanding the rule? How could this description be more helpful?

II. Procedural Matters

A. Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Impact Analysis

Need for Action

This action is needed to ensure that regulations are consistent between FDPIR and SNAP. FDPIR was established by Congress in 1977 as an alternative to the Food Stamp Program for low-income households living on Indian reservations and households near reservations or in Oklahoma that contain at least one person who is a member of a Federally-recognized Tribe that does not have easy access to Food Stamp offices and authorized grocery stores. The name of the Food Stamp Program was changed to the Supplemental Nutrition Assistance Program pursuant to the Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill). To avoid confusion, hereinafter, the terms Food Stamp Act and Food Stamp Program will not be used.

FDPIR has similar eligibility criteria to SNAP, although certain administrative requirements have been simplified and streamlined under FDPIR. The proposed rulemaking will update FDPIR regulations to be consistent with recent changes to SNAP in accordance with Sections 4101, 4103, and 4104 of the Farm Bill. Section 4101 permanently excludes combat pay (*i.e.,* additional pay earned as a result of deployment to or service in a combat zone) as income for the purposes of determining SNAP eligibility. Section 4103 eliminates the maximum dollar limit to the dependent care deduction allowed under SNAP, and Section 4104 excludes from resources any household funds held in qualified retirement or education savings accounts when determining eligibility for SNAP. Section 4104 also excludes future qualified retirement accounts should they be created, and provides the Secretary with discretion to allow resource exclusions for other retirement plans and education savings accounts. This proposed rulemaking will also provide clarification that FDPIR regulations regarding income eligibility are referring to the SNAP net income guidelines, rather than the gross.

Benefits

This rule would amend FDPIR regulations by aligning provisions with recent changes to SNAP as a result of the Farm Bill. These regulatory changes are designed to help ensure that FDPIR benefits are provided to low-income households living on Indian reservations and households near reservations or in Oklahoma that contain at least one person who is a member of a Federally-recognized Tribe that are in need of nutrition assistance. Because FDPIR regulations regarding resource limits and income exclusions would be altered by this rule, participation could potentially increase, thus expanding access to the program and increasing benefits to the targeted population.

FNS has projected the impact of the proposed changes on FDPIR participation. The combined effect of the provisions in this proposed rule will potentially make a small number of households become newly eligible, primarily those households with sizeable dependent care expenses and/or funds in qualified education savings

accounts. However, individual households might benefit from more than one provision and the effect of the overlap could not be determined. Therefore, we are unable to determine with any certainty the total number of individuals that might be added as a result of this rule.

Costs

This action is not expected to significantly increase costs of State and local agencies, or their commercial contractors. The combined impact of the proposed changes in this rulemaking is projected to increase Federal program costs by $1,000 in fiscal year (FY) 2010 and $7,000 over a five-year period (FY 2010 through FY 2014). These increased costs are attributable to potential increases in participation, primarily among those households that have funds in qualified education savings accounts.

C. Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this action will not have a significant impact on a substantial number of small entities. While Indian Tribal Organizations (ITOs) and State Agencies that administer FDPIR will be affected by this rulemaking, the economic effect will not be significant.

D. Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under 10.567. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

F. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The programs affected by the regulatory proposals in this rule are all Tribal or State-administered, Federally-funded programs. The FNS National Office and Regional Offices have formal and informal discussions with State officials on an ongoing basis regarding program issues relating to the distribution of donated foods. FNS meets annually with the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR), a national group of Tribal and State agencies, to discuss issues relating to food distribution.

This rule is intended to provide consistency between FDPIR and SNAP. The rule was prompted by provisions contained in the Farm Bill, enacted on June 18, 2008. Section 4101 of the Farm Bill permanently excludes combat pay (*i.e.,* additional pay earned as a result of deployment to or service in a combat zone) from income when determining eligibility for SNAP. Section 4103 removes the maximum limit on the dependent care deduction and Section 4104 excludes from resources any household funds held in qualified tuition program or retirement accounts when determining eligibility for SNAP.

FNS has considered the impact of the proposed rule on ITOs and State agencies. The overall effect is to ensure that nutrition assistance is provided to low-income households. During the prior consultation period in advance of this rulemaking, FNS was not made aware of any adverse concerns by ITOs or State Agencies.

G. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule, when finalized, is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule would not have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

H. Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule does not contain any new information collection requirements that are subject to review and approval by OMB.

J. E-Government Act Compliance

FNS is committed to compliance with the E-Government Act of 2002 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.

III. Background and Discussion of the Proposed Rule

The proposed rule would amend the regulations for FDPIR at 7 CFR 253.6 to be consistent with SNAP relative to the requirements set forth in the Farm Bill. FDPIR was established by Congress in 1977 as an alternative to SNAP for low-income households living on Indian reservations and households near

reservations or in Oklahoma that contain at least one person who is a member of a Federally-recognized Tribe that does not have easy access to SNAP offices and authorized grocery stores. Consequently, FDPIR has similar eligibility criteria to SNAP, although certain administrative requirements have been simplified and streamlined under FDPIR. The changes would improve program service by: (1) Excluding household funds held in education savings accounts specified in Section 4104 of the Farm Bill and any other education accounts for which a resource exclusion is provided under SNAP; (2) clarifying that the current FDPIR resource exclusion for retirement accounts is limited to qualified retirement accounts specified in Section 4104 of the Farm Bill and any other retirement accounts for which a resource exclusion is provided under SNAP; (3) clarifying that the FDPIR regulations regarding income eligibility are referring to the SNAP net monthly income standard, rather than the SNAP gross monthly income standard; (4) permanently excluding combat pay from income when determining eligibility for FDPIR; and (5) eliminating the maximum limit to the dependent care deduction.

The proposed amendments would also impact the operation of the Food Distribution Program for Indian Households in Oklahoma (FDPIHO), 7 CFR Part 254, under which the eligibility and certification provisions of 7 CFR Part 253 are adopted by reference at 7 CFR 254.5(a). The term "FDPIR," as used in this proposed rule, refers collectively to FDPIR and FDPIHO. The proposed amendments are discussed in more detail below.

A. Excluding Household Funds Held in Education Savings Accounts From Consideration as a Resource

This proposed rule would amend FDPIR regulations at 7 CFR 253.6(d)(2) to ensure consistent treatment of certain resources in determining FDPIR and SNAP eligibility. In accordance with Section 4104 of the Farm Bill, which amended Section 5(g) of the Food and Nutrition Act 2008 (7 U.S.C. 2014(g)), funds that are held in qualified tuition program accounts described in section 529 of the Internal Revenue Code of 1986 or in a Coverdell education savings account under section 530 of that Code are excluded from the calculation of household resources when determining eligibility for SNAP. This rule proposes to amend 7 CFR 253.6(d)(2) to exclude any funds held in these accounts from being considered FDPIR resources.

Section 4104 of the Farm Bill also provides the Secretary with discretion to exclude in the calculation of resources under SNAP any other education programs, contracts or accounts as determined by the Secretary. This rule proposes to amend 7 CFR 253.6(d)(2) to allow a resource exclusion for any other education savings accounts for which a resource exclusion is allowed under SNAP. This would allow FNS to maintain consistent policy in the treatment of education savings accounts and promote consistency in policy between FDPIR and SNAP.

B. Clarification Regarding the Resource Exclusion for Qualified Retirement Accounts

This proposed rule would amend FDPIR regulations at 7 CFR 253.6(d)(2) to ensure consistent treatment of certain resources in determining FDPIR and SNAP eligibility. In accordance with Section 4104, funds that are held in qualified retirement accounts are excluded when determining eligibility for SNAP. Specifically, that section of the Farm Bill excludes the value of funds held in retirement accounts described in sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c)(18) of the Internal Revenue Code of 1986 and the value of funds held in a Federal Thrift Savings Plan account as described in 5 U.S.C. 8439.

In accordance with FDPIR regulations and policy, retirement accounts and pension plans are excluded as long as the funds remain in the accounts. However, for clarification purposes and to ensure consistency between FDPIR and SNAP, this rule proposes to amend 7 CFR 253.6(d)(2) to exclude under FDPIR the comprehensive list of qualified retirement accounts specified in Section 4104 of the Farm Bill.

Section 4104 of the Farm Bill also provides for the exclusion of retirement accounts that may be enacted and determined to be exempt from tax under the Internal Revenue Code of 1986, and any other retirement plans, contracts, or accounts as determined by the Secretary. To allow FNS to maintain consistency with regard to its treatment of retirement accounts and promote consistency in policy between FDPIR and SNAP, this rule proposes to amend 7 CFR 253.6(d)(2) to allow a resource exclusion for any other retirement accounts for which a resource exclusion is allowed under SNAP.

C. Clarifying the Application of SNAP Net Income Standards to FDPIR

Current FDPIR regulations at 7 CFR 253.6(e)(1)(i) state that the FDPIR income eligibility standards shall be the "monthly income eligibility standards for the Food Stamp Program." However, SNAP eligibility procedures employ two separate income standards—a gross monthly income standard and a net monthly income standard. It is FNS policy that the SNAP net monthly income standard is the applicable income standard for determining income eligibility for FDPIR. However, due to lack of clarity in the regulations, FNS has received requests for policy clarification regarding which SNAP income guideline is applicable under FDPIR. Therefore, FNS is proposing an amendment to the regulations at 7 CFR 253.6(e)(1)(i) to clarify that FDPIR applies the SNAP net income standard, not the gross income standard. This change would clarify the regulatory language at 7 CFR 253.6(e)(1)(i), but not change current FDPIR policy nor revise current FDPIR income guidelines or eligibility criteria.

D. Excluding Combat Pay From Income

Appropriation legislation in FY 2005 through FY 2008 excluded combat pay (*i.e.,* additional pay earned as a result of deployment to or service in a combat zone) from income for the purposes of determining eligibility for SNAP. This policy was adopted for FDPIR and implemented by policy memorandum for those fiscal years. Section 4101 of the Farm Bill amended Section 5(d) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(d)) to permanently exclude combat pay from income for the purposes of determining SNAP eligibility. This change was implemented under FDPIR by policy memorandum on July 16, 2008. FNS is proposing a conforming amendment to FDPIR regulations at 7 CFR 253.6(e)(3)(xi) to permanently exclude combat pay from income when determining eligibility for FDPIR. The proposed change would align FDPIR regulations with current FDPIR and SNAP policy.

E. Amending the Dependent Care Deduction

Current FDPIR regulations at 7 CFR 253.6(f)(2) state that the dependent care deduction cannot exceed the maximum allowable under SNAP. Section 4103 of the Farm Bill amended Section 5(e)(3)(A) of the Food and Nutrition Act of 2008 (7 U.S.C. 2014(e)(3)(A)) and eliminated the maximum dollar limit to the SNAP dependent care deduction, allowing participants to claim the full cost of their dependent care expenses. FNS implemented this change under FDPIR by the same policy memorandum mentioned in the previous paragraph.

This proposed revision would remove regulatory language at 7 CFR 253.6(f)(2) that imposes a maximum limit on dependent care deductions, thereby aligning the FDPIR regulations with current FDPIR and SNAP policy.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 253 is proposed to be amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for 7 CFR Part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2032).

2. In § 253.6:

a. Revise paragraph (d)(2)(i);

b. Redesignate paragraphs (d)(2)(ii) through (d)(2)(iv) as (d)(2)(iii) through (d)(2)(v), respectively;

c. Add new paragraph (d)(2)(ii);

d. Add new paragraph (d)(2)(vi);

e. Revise the second sentence of paragraph (e)(1)(i);

f. Add new paragraph (e)(3)(xi); and

g. Remove the second sentence of paragraph (f)(2).

The revisions and additions read as follows:

§ 253.6 Eligibility of households.

* * * * *

(d) * * *

(2) * * *

(i) The cash value of life insurance policies and the first $1,500 of the equity value of one bona fide pre-paid funeral agreement per household member. The equity value of a pre-paid funeral agreement is the value that can be legally converted to cash by the household member. For example, an individual has a $1,200 pre-paid funeral agreement with a funeral home. The conditions of the agreement allow the household to cancel the agreement and receive a refund of the $1,200 minus a service fee of $50. The equity value of the pre-paid funeral agreement is $1,150.

(ii) The value of funds held in retirement accounts described in sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c)(18) of the Internal Revenue Code of 1986; the value of funds held in a Federal Thrift Savings Plan account as described in 5 U.S.C. 8439; and any other retirement program or account for which a resource exclusion is allowed under the Supplemental Nutrition Assistance Program (SNAP).

* * * * *

(vi) The value of funds held in a qualified education savings program described in section 529 of Internal Revenue Code of 1986 or in a Coverdell education savings account under section 530 of that Code, and any other education savings program or account for which a resource exclusion is allowed under SNAP.

* * * * *

(e) * * *

(1) * * *

(i) * * * The income eligibility standards shall be the applicable SNAP net monthly income eligibility standards for the appropriate area, increased by the amount of the applicable SNAP standard deduction for that area.

* * * * *

(3) * * *

(xi) *Combat pay.* Combat pay is defined as additional payment that is received by or from a member of the United States Armed Forces deployed to a combat zone, if the additional pay is the result of deployment to or service in a combat zone, and was not received immediately prior to serving in a combat zone.

* * * * *

Dated: April 20, 2010.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2010–9645 Filed 4–22–10; 11:15 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EE–DET–03–001]

RIN 1904–AA86

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Proposed Determination Concerning the Potential for Energy Conservation Standards for High-Intensity Discharge (HID) Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed determination.

SUMMARY: The Energy Policy and Conservation Act (EPCA or the Act), as amended, requires the U.S. Department of Energy (DOE) to issue a final determination by June 30, 2010, as to whether energy conservation standards for HID lamps are warranted. Pursuant to court order, this final determination must be made by June 30, 2010. This document informs interested parties of the analysis underlying this proposal, which examines the potential energy savings and whether a future energy conservation standard for this equipment would be technologically feasible and economically justified. In this document, DOE also announces the availability of a preliminary technical support document (TSD), which provides additional analysis in support of the determination. The preliminary TSD is available from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_lamps.html.*

DATES: Written comments on this document and the preliminary TSD are welcome and must be submitted no later than May 27, 2010. For detailed instructions, *see* section IV "Public Participation."

ADDRESSES: Interested parties may submit comments, identified by docket number EE–DET–03–001 and/or Regulation Identifier Number (RIN) 1904–AA86, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: hid.determination@ee.doe.gov.* Include docket number EE–DET–03–001 and/or RIN 1904–AA86 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Technical Support Document for High-Intensity Discharge (HID) Lamps, docket number EE–DET–03–001 and/or RIN 1904–AA86, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

For additional instruction on submitting comments, *see* section IV, "Public Participation."

Docket: For access to the docket to read background documents, the preliminary TSD, or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC

20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room. You may also obtain copies of certain documents in this proceeding from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_lamps.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–1851. E-mail: *Linda.Graves@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–6111. E-mail: *Jennifer.Tiedeman@hq.doe.gov.*

For further information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

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I. Summary of the Proposed Determination

EPCA requires DOE to issue a final determination whether energy conservation standards for HID lamps would be technologically feasible, economically justified, and would result in significant energy savings. DOE has tentatively determined that such standards are technologically feasible, economically justified, and would result in significant energy savings. Thus, DOE proposes to issue a positive determination. In its analysis for this proposed determination, DOE evaluated potential standards for HID that would lead to a migration from less efficient probe-start metal halide (MH) lamps to more efficient pulse-start MH lamps and high-pressure sodium (HPS) lamps. Both pulse-start MH and HPS lamps are existing HID technologies that are technically feasible. DOE's analysis determined whether a potential standard that sets a level that eliminates inefficient probe-start MH lamps would be economically justified and would result in significant energy savings.

DOE has tentatively determined that standards for HID lamps would be expected to be economically justified from the perspective of an individual consumer. According to DOE's analysis, there is at least one set of standard levels for HID lamps which could be set that would reduce the life-cycle cost (LCC) of ownership for the typical consumer; that is, the increase in equipment cost resulting from a standard would be more than offset by energy cost savings over the life of the system.

Standards would also be cost-effective from a national perspective. The national net present value (NPV) from standards could be as much as $15.0 billion in 2009$ for products purchased from 2017 to 2046, assuming an annual real discount rate of 3 percent. This forecast considers only the direct financial costs and benefits of standards to consumers, specifically the increased equipment costs of HID lamps and the associated energy cost savings. In its proposed determination analysis, DOE did not monetize or otherwise characterize any other potential costs and benefits of standards such as manufacturer impacts or power plant emission reductions. If the final determination is positive, then such additional impacts would be examined in a future analysis of the economic justification of particular standard levels in the context of a standards rulemaking that would set specific energy conservation requirements.

DOE's analysis also indicates that standards would result in significant cumulative energy savings over the analysis period (2017 to 2046)—at least 2.8 quads. This is equivalent to the annual electricity consumption of approximately 14 million U.S. homes.

Further documentation supporting the analyses described in this notice is contained in a separate preliminary TSD, available from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_lamps.html.*

A. Legal Authority

The National Energy Conservation Policy Act of 1978 amended EPCA to add a part C to title III of EPCA [1] establishing an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) The Energy Policy Act of 1992 (EPACT), Public Law 102–486, 106 Stat. 2776 also amended EPCA, and included amendments that expanded title III to include HID lamps. Specifically, EPACT amended section 346 of EPCA (42 U.S.C. 6317) to provide in paragraph (a) that the Secretary of Energy (Secretary) must prescribe testing requirements and energy conservation standards for those HID lamps for which the Secretary determines that energy conservation standards "would be technologically feasible and economically justified, and would result in significant energy savings." (42 U.S.C. 6317(a)(1))

Under EPCA, if DOE makes a positive determination, then it must proceed to establish testing requirements for those HID lamps to which the determination applies. (42 U.S.C. 6317(a)(1)) Subsequently, DOE will conduct a rulemaking to establish appropriate energy conservation standards. During the standards rulemaking, DOE would decide whether, and at what level(s), to

[1] For editorial reasons, Part C, Certain Industrial Equipment, was redesignated as Part A–1 in the United States Code.

promulgate energy conservation standards. This decision would be based on an in-depth consideration, with public participation, of the technological feasibility, economic justification, and energy savings of potential standard levels in the context of the criteria and procedures for prescribing new or amended standards established by section 325(o) and (p). (42 U.S.C. 6295(o)(p).)

B. Background

DOE conducted previous analyses estimating the likely range of energy savings and economic benefits that would result from energy conservation standards for HID lamps, and prepared reports describing its analyses. DOE published these draft reports in June 2003 and December 2004, and made them available for public comment on the Office of Energy Efficiency and Renewable Energy's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_lamps.html.* The reports made no recommendation concerning the determination that DOE should make.

After the 2003 report, DOE received comments. The National Electrical Manufacturers Association (NEMA) encouraged DOE to extend coverage to HID lamps even if no energy conservation standard were set. (NEMA, No. 6 at pp. 1–2) [2] Again after the 2004 report, NEMA made a similar comment. NEMA also emphasized that "it is incumbent on DOE to state clearly in a forthcoming determination that HID lamps are 'covered products' and thus Federal law preempts State regulation of all HID lamps." (NEMA, No. 15 at p. 1.)

In 2002, DOE began the analysis in preparation for a proposed determination. DOE conducted initial analyses and shared its initial findings regarding efficiency improvement in HID lamps in the June 2003 draft report. Subsequently, DOE received additional data and information provided by NEMA. More recently, NEMA provided HID lamp shipments by lamp type for 2003 to 2008, and shipments by wattage grouping (*i.e.,* low, medium, and high) for 2008 that was used in the analysis for today's proposed determination.

[2] A notation in the form "NEMA, No. 6 at pp. 1–2" identifies a written comment (1) made by NEMA; (2) recorded in document number 6 that is filed in the docket of the HID lamp energy conservation standards rulemaking EE–DET–03–001 and maintained in the Resource Room of the Building Technologies Program; and (3) which appears on pages 1–2 of document number 6.

1. Definitions

DOE reviewed the relevant portions of the Energy Independence Security Act of 2007 (EISA 2007), and 10 CFR part 431 for applicable existing definitions for use in conducting a determination for energy conservation standards for HID lamps. EISA 2007 amended EPCA, in part by adding key terms that are applicable to the HID determination, including "high intensity discharge lamp," "mercury vapor lamp," and "metal halide lamp." (42 U.S.C. 6291) These terms are defined as follows:

"*High intensity discharge lamp*" *means an electric-discharge lamp in which*—

(1) The light-producing arc is stabilized by the arc tube wall temperature; and

(2) The arc tube wall loading is in excess of 3 watts (W)/centimeters squared (cm^2), including such lamps that are mercury vapor, metal halide, and high-pressure sodium lamps. (42 U.S.C. 6291(46)(A).)

"Mercury vapor lamp" means a high intensity discharge lamp in which the major portion of the light is produced by radiation from mercury typically operating at a partial vapor pressure in excess of 100,000 pascals (Pa) (approximately 1 standard atmosphere). It includes clear, phosphor-coated, and self-ballasted screw-base lamps. (42 U.S.C. 6291(47)(A).)

"Metal halide lamp" means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their product of dissociation, possibly in combination with metallic vapors. (42 U.S.C. 6291(63).)

Although current statutory definitions pertaining to HID lamps are relatively comprehensive, DOE believes that an additional definition will be necessary should DOE begin a test procedure rulemaking for HID lamps. Therefore, in the future, DOE will propose inserting a definition for "high pressure sodium lamp" into 10 CFR 431.452, "Definitions concerning high-intensity discharge lamps."

Although low-pressure sodium (LPS) lamps are often classified as HID lamps in catalogues, they do not meet the definition of an HID lamp pursuant to EPCA, as amended. The arc tube wall loading for LPS lamps is lower than the statutorily defined 3 W/cm^2 threshold; therefore, LPS lamps are not HID lamps for purposes of today's proposed determination.

2. 2003 Draft Report

DOE received comments on the June 2003 draft report from Allegheny Power; the American Council for an Energy-Efficient Economy (ACEEE); the California Department of Transportation (Caltrans); Delta Power Supply (Delta); EEI; NEMA; the Pennsylvania Department of Transportation (PennDOT); and Ms. Lucinda Seigel. Unlike today's proposed determination, DOE's previous reports focused primarily on MV lamps rather than all HID lamp technologies. The following is a discussion of general comments received in response to the 2003 draft report, and a limited review of specific technical comments.

Comments responding to the 2003 Draft Report were generally supportive of a positive determination, and indicated that substantial benefits could be obtained from a standard that eliminated less efficient MV lamps. Delta stated that it wanted its comment to be considered an "emphatic YES" to an HID lamp standard. (Delta, No. 9 at p. 2) Many interested parties were in favor of restrictions on MV lamps. Caltrans commented that a possible rule eliminating MV would not affect it because it had stopped installing MV products and replaced most MV fixtures with HPS. (Caltrans, No. 8 at p. 1) ACEEE commented on the 2003 draft report that "ACEEE agrees that it makes sense to establish a minimum efficacy standard that eliminates mercury vapor lamps for many, if not all, applications." (ACEEE, No. 11 at p. 1) NEMA commented that MV lamps will have been in the marketplace for over 80 years, and energy efficient replacements in the form of HPS and MH lamps have been generally available for 40 years.

DOE also received specific technical comments regarding possible lamp efficacy (*i.e.,* a measure of the conversion of power into visible light which is the technical term for lamp efficiency in the lighting industry and which is expressed in units of lumens/W). ACEEE referenced the minimum lamp efficacy of 60 lumens/W permitted in exterior lighting by the American Society of Heating, Refrigerating and Air-Conditioning Engineers/IESNA Standard 90.1–1999. ACEEE further recommended that DOE set minimum efficacy requirements that would eliminate probe-start MH lamps greater than 150 W. (ACEEE, No. 11 at p. 2)

DOE received many comments regarding alternative, non-HID technologies, including induction and fluorescent. Non-HID technologies are achieving market penetration in lighting applications traditionally dominated by HID; however, a detailed evaluation of these non-HID technologies falls outside of the scope of today's proposed determination. DOE will more fully

consider other non-HID sources as part of a full standards rulemaking.

A comment was also received regarding the potential effect of standards on small businesses. Caltrans stated that small businesses usually are not manufacturers of lamps and ballasts and believed that the potential impact on small businesses would be minimal. (Caltrans, No. 8 at p. 1) In its technology and market assessments, DOE found that the majority of HID lamps are manufactured by a limited number of large companies. However, if DOE makes a positive determination, it will evaluate the potential effects of energy conservation standards on small businesses in subsequent HID lamp rulemakings.

3. 2004 Draft Report

DOE received additional comments on the December 2004 draft report from ACEEE, Benya Lighting Design (Benya), and NEMA. These comments are discussed in detail in the "Methodology" section of this notice.

II. Discussion of the Analysis of High-Intensity Discharge Lamps

A. Purpose and Content

DOE performed an analysis of the feasibility of achieving significant energy savings as a result of energy conservation standards for HID lamps. DOE presents the results of this analysis in a preliminary TSD for this proposed determination. In subsequent analyses for the standards preliminary analysis, NOPR, and final rule, DOE will perform the analyses required by EPCA. These analyses will involve more precise and detailed information that DOE will develop during the standards rulemaking process, and will detail the effects of proposed energy conservation standards for HID lamps.

B. Methodology

To address EPCA requirements that DOE determine whether energy conservation standards for HID lamps would be technologically feasible and economically justified, and result in significant energy savings (42 U.S.C. 6317(b)(1)), DOE's performed five component analyses: (1) A market and technology assessment to understand better where and how HID lamps are used; (2) an engineering analysis to estimate the relationship between product costs and energy use; (3) an LCC analysis to estimate the costs and benefits to users from increased efficacy in HID lamps; (4) a national energy savings analysis to estimate the potential energy savings on a national scale; and (5) a national consumer impacts analysis to estimate potential economic costs and benefits that would result from improving energy efficacy in the considered HID lamps. The following is a brief description of each analysis.

1. Market and Technology Assessment

DOE conducted research into the market for considered HID lamps, including national annual shipments, the current range of lamp-and-ballast system efficacies, lamp applications and utilization, market structure, and distribution channels. It used information from trade associations that support industrial sectors and reviewed literature in technical journals. At DOE's request, NEMA provided data on lamp shipments of HID lamps, subcategorized by HPS, MV, and MH lamp data from its member manufacturers, for the five-year period from 2003 to 2008. NEMA had provided data for 1990 to 2002 to DOE in previous efforts related to today's proposed determination. Based on its market research, DOE found that HID lamps are typically used in commercial, industrial, and municipal applications with differing electricity tariffs. DOE estimates that, on average, HID lamps are used in applications (*e.g.*, municipal (exterior) and industrial) that typically operate 12 hours per day or more.

Dimming of HID lamps is not common. DOE examined NEMA's Lighting Systems Division Document LSD 14–2002 *Guidelines on the Application of Dimming High Intensity Discharge Lamps* to evaluate typical practices for HID dimming. LSD 14–2002 notes that that dimming ballasts are relatively new (having only been commercially available since the 1990s); that HID lamps should not be dimmed below 50 percent of the rated lamp wattage; that color, life and efficacy are affected by dimming; and that few standards exist for dimming HID systems requiring that the system (lamp and ballast) be tested in the field to determine if the performance of the lamp and ballast working together is acceptable. Given these barriers to the dimming of HID lamps in typical applications, DOE assumed that the HID lamps are operating at full power for the purpose of the analysis supporting this proposed determination.

Several comments in response to the 2004 draft report addressed elements of the HID lamp market and how standards promulgated by DOE might impact the market. Benya commented that standards that effectively banned MV lamps could be warranted and beneficial. (Benya, No. 14 at p. 1) ACEEE commented that DOE should focus on replacing probe-start MH with pulse-start MH, in addition to possibly introducing standards for MV lamps. (ACEEE, No. 16 at p. 1.)

Since these comments were received, new legislation was enacted in California that prevents MV ballasts from being manufactured or imported pursuant to 10 CFR 431.286. *See* CAL. CODE REGS. Title 20, § 1605.3(n)(2) (2010). Consequently the analysis for this proposed determination assumes that any MV lamp shipments will service existing MV ballasts only, and that MV lamp shipments will decline as a result.

Regulations currently in effect in six States (Arizona, California, New York, Oregon, Rhode Island, and Washington) limit the use of probe-start MH technologies by banning fixtures in the wattage range of 150–500 from having probe-start ballasts. DOE's analysis for the proposed determination uses information regarding the impact of the State regulations and considers market trends in both MV and probe-start MH technologies.

A key factor in the relative performance of different HID lamp technologies is the lamp lifetime. Manufacturers publish the life rating for HID lamps, known as B50 (*i.e.,* the point at which 50 percent of an operating population of lamps is still operating). DOE received information regarding lamp and ballast lifetimes in comments received in response to the 2003 draft report. DOE received comments that MV and HPS lamps were typically relamped (*i.e.,* replaced) every 4 years, and MH lamps typically every 2 years. (Caltrans, No. 8 at p. 2; Allegheny, No. 12 at p. 1) Allegheny further stated that the lamp life is generally the rated lamp life by the manufacturer. Typical life of HID lamps varies with lamp type and wattage, and ranges from 8,000 to greater than 24,000 hours, according to the manufacturer catalog data surveyed and included in the preliminary TSD. To determine annual maintenance costs, DOE uses median rated lamp lifetime as the basis for relamping schedules.

HID lamps typically cannot operate without a ballast that is specifically designed for a corresponding lamp technology. The vast majority of ballasts for HID lamps are of the electromagnetic (magnetic) type. The industry-accepted life of magnetic ballasts is 50,000 hours, and is widely cited in ballast catalogs and by utility programs. After the 2003 report, Allegheny stated that MV ballast lifetimes are 12 years or greater. (Allegheny, No. 12 at p. 1) The life of the light fixture (also known as a luminaire) varies but generally lasts as long as the ballast.

Another factor that can affect the energy consumption of an HID lighting system is the energy consumption of the ballast. DOE analyzed the system (lamp and ballast) power since particular lamp technologies are usually associated with a technology-specific ballast design. DOE received comments related to system input power in response to the technical reports preceding today's proposed determination. ACEEE commented that an energy analysis should use the system wattage for the input power. (ACEEE, No. 11 at p. 3) In response, DOE selected a representative ballast to pair with the lamp, and used the system input power to determine energy usage for the proposed determination. DOE evaluated manufacturer data on ballast performance for multiple HID ballast designs including constant-wattage autotransformer, constant-wattage isolated, high-reactance autotransformer, and magnetically-regulated electronic ballasts. Based on its evaluation, DOE determined that the variation in ballast input power across ballast designs for a given lamp wattage is relatively small compared to the energy use difference between different HID lighting system technologies. For example, for 175 W probe-start ballasts, the minimum surveyed input power was 200 W, the maximum surveyed input power was 226 W, and the median input power was 208 W. There is only a 13 percent range in input power from the minimum to the maximum input powers surveyed. DOE calculated median input wattage across applicable ballast designs to calculate the system energy consumption and concluded that ballast energy consumption variation should be less than a 7-percent effect. This variation is small compared to the relative magnitude of energy savings calculated in DOE's analysis. By comparison, the most efficient HID substitute for the baseline 175 watt probe start MH lamp is a 100 watt HPS lamp that uses more than 40 percent less power.

For this proposed determination, DOE analyzed a range of lamp capacities. At least two conventions exist for characterizing HID lamp capacity: Input power and light output. DOE categorized representative HID lamps based on the light output (measured in mean lumens) of the analyzed baseline lamp types since, as lamps get more efficient, the input power should decrease as the user service (*i.e.,* light output) stays the same or increases. The analyzed equipment classes correspond with medium-wattage HID lamps (defined as between 150 and 500 watts), which was the primary wattage range considered in the 2004 draft report. However, because DOE considers lumen output instead of wattage as a more appropriate measure of lamp utility from a consumer perspective, it uses lumen output as the basis for categorization in today's proposed determination as shown in table II.1 in section C.1 of this notice which provides the engineering analysis results.

2. Engineering Analysis

In the engineering analysis, DOE identified representative baseline HID lighting systems and energy-efficient substitutes within each lumen output category. Both the baseline system and the efficiency substitutes have different power ratings, with the power rating decreasing with the increased efficacy of the substitute. The engineering analysis outputs of cost and power consumption are critical inputs to subsequent financial cost-benefit calculations for individual consumers performed in the LCC and the national impacts analysis. DOE developed end-user prices, including a contractor mark-up rate and average national sales tax, for analyzed lamp, lamp-and-ballast, and luminaire designs.

DOE did not include MV lamps in the engineering analysis for today's proposed determination. DOE forecasts that MV lamp shipments will decline to zero by the effective date of a potential HID lamps standard, assumed as 2017 because of the ban on MV ballast manufactured after January 1, 2008, codified in EPCA as amended. (42 U.S.C. 6295(ee).) Consequently, DOE did not analyze MV baseline lamps in its LCC analysis because MV fixtures are no longer a viable purchase option. However, DOE did consider the existing MV in existing HID installed base when it performed its national energy savings/national consumer benefits analysis. This installed base of MV systems will age and be replaced with other HID technologies over time.

DOE examined other currently available commercial equipment for replacing the least efficacious (baseline) HID sources—MV and probe-start MH. ACEEE commented on the 2003 draft report, noting that a potential standard should address replacing probe-start MH lamps with pulse-start MH lamps. (ACEEE, No. 11 at p. 2.) Substitutes include either HPS or pulse-start MH as typical options when replacing either MV or probe-start MH technologies. HPS lamps are among the most efficient electric light sources, and are a viable substitute in applications where energy efficiency and/or lower first cost is considered more important than color quality. Pulse-start MH is the most efficient broad spectrum ("white light") HID technology, and has a higher first cost than MV and HPS. DOE received related comments during the Metal Halide Lamp Fixture (DOE Docket No. EERE–2009–BT–STD–0018/RIN 1904–AC00) public meeting on January 26, 2010. During this meeting, Philips noted that after California enacted a provision regarding ballast efficiency that affects probe-start MH lamp ballasts, the manufacturer saw sales shift from probe-start MH to both pulse-start MH and HPS. (Philips, RIN1904–AC00 Public Meeting Transcript, No. 1.2.005, at pp. 85 and 164) Philips noted that when California implemented standards that eliminated probe-start MH technologies, the manufacturer saw a majority of its sales for probe-start MH lamps shift in equal portions to pulse-start MH and HPS lamps, respectively. Therefore, DOE used both HPS and pulse-start MH as substitute options to the baseline probe-start MH technologies.

DOE assumes in the analysis supporting today's proposed determination that changes in lamp technology will lead to changes in the entire lamp system. DOE therefore used a systems approach in analyzing the representative equipment types because both lamps and ballasts determine a system's energy use and light output. Accordingly, the analysis paired lamps with corresponding ballasts to develop representative lamp-and-ballast systems, in order to estimate the actual energy usage and light output of operating lamps.

In the engineering analysis for today's proposed determination, DOE only considered magnetic ballasts because they are the most common ballast for HID lighting systems. DOE estimates that magnetic ballasts constitute over 90 percent of HID ballasts currently sold and an even higher percentage of the installed HID ballast stock. Electronic ballasts entered the market at the end of the 1990s, and still occupy less than a 10 percent market share because of a variety of technical and operational barriers that are discussed in some detail in the preliminary TSD.

3. Life-Cycle Cost Analysis

DOE conducted an initial LCC analysis to estimate the net financial benefit to users from the increased efficacy of HID lamps. The LCC analysis compared the additional initial cost of a more efficacious lamp and related fixture to the discounted value of electricity savings over the life of the fixture ballast. DOE's LCC analysis used

the following inputs: Estimated average annual operating hours and lamp lifetimes; estimated average prices for lamps and fixtures; representative maintenance costs; electricity prices paid by users of HID lamps; and the discount rate. In commenting on previous draft reports, PennDOT noted that tariffs vary by region even within the same State. (PennDOT, No. 5 at p. 1.) While DOE agrees that there is regional variation of tariffs, for the purpose of today's proposed determination, DOE uses national average electricity prices for 2009 from the Energy Information Administration's (EIA) Annual Energy Outlook 2009 (AEO 2009) for commercial and industrial applications to calculate impacts for the average HID lamp user. The LCC analysis does not include MV lamps, since MV ballasts can no longer be imported or manufactured; DOE assumed that when MV ballasts failed consumers would have to switch to another HID technology.

The LCC analysis not only evaluated the replacement of the HID lamp, but also those cases where the whole system would need to be replaced. Given the specificity of HID lamp-and-ballast combinations, DOE assumed that replacement of baseline HID systems with energy-efficient substitutes would, at a minimum, require a new lamp-and-ballast system. In some cases, the physical and operational characteristics of the replacement lamp-and-ballast system may also require replacement of the entire fixture. Consequently, DOE treated lamp-and-ballast and fixture replacement as economic issues in the LCC analysis, which considers the installed cost of the lamp, lamp-and-ballast system, and fixture. In analyzing the lighting system, the ballast has the longer lifetime and therefore represents the lifetime of the system (which may have the lamp replaced several times before the ballast is replaced). DOE therefore set the LCC analysis period equal to the lifetime of the fixture ballast in years, *i.e.,* 50,000 hours divided by the annual operating hours. This approach is consistent with the LCC methodology that DOE used in the 2003 draft report.

DOE assigned annual operating hours to representative equipment based on two operating scenarios. Exterior lighting applications were assumed for the commercial operating scenario, where HID lamps with poorer color quality (*e.g.,* HPS) are a viable substitute (*e.g.,* street and parking lot lighting). Interior lighting applications were assumed for the industrial operating scenario, where "white light" substitutes with higher color quality (*e.g.,* pulse-start MH) are assumed as mandatory.

DOE obtained information on hours of operation for the different scenarios from industry publications that provide guidance for installers and lighting engineers. From these sources DOE estimated 4,200 hours per year of operation for exterior applications and 5,840 hours per year for interior applications. A more detailed discussion of the data sources and the derivation of these estimates are provided in the preliminary TSD.

In the LCC analysis, DOE also includes maintenance costs in the estimation of the LCC of HID lighting systems. DOE examined a range of publicly available information sources and estimated an average annual maintenance cost of $225 per relamping for exterior applications. DOE could not find comparable data for representative interior maintenance costs but because of the increased accessibility and better working conditions for interior installations, DOE divided the exterior relamping costs by three to estimate the interior relamping costs. Therefore, for today's proposed determination DOE used $225 for each exterior relamping and $74 for each interior relamping. DOE requests comment on these representative maintenance costs.

For the LCC analysis, DOE estimated average commercial and industrial electricity prices using the 2017 to 2030 forecasts from EIA's *AEO 2009.* After the 2003 Report, DOE received two comments regarding the price of electricity. ACEEE recommended using a later version of the *AEO* in the final rule. (ACEEE, No. 11 at 3.) PennDOT stated that energy tariffs vary across the State between the range of $0.035/kWh to $0.15/kWh. PennDOT felt that the 2003 rates between $0.09/kWh to $0.11/kWh may not return a valid result when compared to actual costs. (PennDOT, No. 5 at p. 1.) While DOE agrees that there may be substantial variability in tariffs, for today's proposed determination DOE believes that using the average price of electricity is sufficient to characterize the overall economic justification of a potential standard. DOE is therefore using the average price per end use sector (*i.e.,* commercial or industrial) over the course of the analysis period. DOE requests comment as to whether in the full rulemaking analysis, DOE's analysis should include the minimum, mean, and the maximum energy tariffs for the relevant end use sectors.

In the LCC analysis, the discount rate determines the relative value of future energy savings compared to increases in first costs that may arise from a potential energy conservation standard. DOE received comments from ACEEE regarding the discount rates used in the 2003 report. ACEEE felt that the 8-percent rate was reasonable and the 15-percent rate was much too high. (ACEEE, No. 11 at p. 2.) For commercial and industrial consumers, DOE estimates the cost of capital for commercial and industrial companies by examining both debt and equity capital, and develops an appropriately weighted average of the cost to the company of equity and debt financing. The resulting average discounted industrial and commercial discount rates used in the LCC analysis are 7.6 percent and 7.0 percent, respectively.

In the 2003 report, DOE used retail catalog pricing for HID lamp and fixture prices. In response, NEMA commented that retail price catalogs are not a good source of actual cost information and recommended hiring an energy service company to solicit bids on prices. (NEMA, No. 6 at p. 4.) DOE considered this comment, but while DOE agrees that there may be inaccuracies in list prices, DOE believes that there may also be distortions in bid prices that would create data that is unrepresentative of future costs. Currently the country is experiencing a deep recession where bid prices are likely to be substantially deflated compared to the case of average economic conditions. This is likely to distort any bid price data that would be solicited by DOE. DOE therefore believes at this time that catalogue price data is as representative as bid price data for the purposes of today's proposed determination.

DOE estimated the base purchase price of representative HID lamps, ballasts, and fixtures using prices available on both the W.W. Grainger, Inc. and Goodmart Web sites. These online retailer price catalogues were selected because they offer a wide range of products *(i.e.,* lamps, ballasts, and fixtures) for multiple types of HID lamps and wattages. The municipal procurement contracts also exist for HID lamps and can provide price data, but do not contain price data for other components of the lamp system needed for the analysis. DOE also evaluated State procurement contracts for fixtures but found then to be highly variable. DOE therefore used the prices developed from the Grainger and Goodmart Web sites as an information source that is publicly available (requiring no special log in to access the data) and which offers product information that could be applied to the full range of HID lighting system technologies and components. The preliminary TSD lists the price data that

DOE obtained from all sources, including RS–Means, State procurement contracts, Grainger, and Goodmart. HID prices vary by region, manufacturer, quantity, type, and quality (and that end users may pay different prices), and therefore DOE attempted to select price data for different lighting system options that were directly comparable. DOE invites comment on its selection and analysis of the available HID lighting system price data.

DOE added a contractor mark-up to the fixture cost to reflect the actual installed prices in the LCC. ACEEE commented that DOE should assume a 13-percent contractor mark-up rate. (ACEEE, No. 11 at p. 2.) DOE compared this markup with data from other lighting rules, agreed with the ACEEE comment, and used a mark-up of 13 percent in the proposed determination. DOE also added an average national sales tax of 7 percent to the installed cost.

Depending on when different parts of an HID lighting system are replaced, the costs of switching to improved efficacy lamps can vary. DOE therefore requested comment in the 2003 draft report regarding when a standard might prompt: (1) A lamp replacement; (2) replacement of both the lamp and the ballast; or (3) replacement of the entire HID lighting fixture. Allegheny commented that for all but roadway fixtures that are customer-owned and under Allegheny's contract maintenance, Allegheny would replace the fixture outright if the lamp were no longer available. (Allegheny, No. 12 at pp. 2–3.) DOE also asked interested parties "to provide their estimates of the percentage of the market that will choose each replacement option." Allegheny surveyed fixture and lamp suppliers and found that 80 percent would replace the fixture, and the remaining 20 percent would either replace the lamp or lamp-and-ballast. (Allegheny, No. 12 at pp. 2–3.) Allegheny's comments are supported by ACEEE's comments that "evidence supports full luminaire replacement of some metal halide systems over more time-consuming lamp/ballast replacements." (ACEEE, No. 11 at p. 3.) Today's proposed determination includes lamp-and-ballast and fixture replacement costs when determining the LCC for HID lamps.

4. National Energy Savings Analysis

To estimate national energy savings for HID lamps sold from 2017 through 2046, DOE calculated the estimated energy usage of analyzed lamp-and-ballast systems in a base case (absent a standard) and a standards case. DOE calculated the installed base of HID lamps using historical lamp shipments data provided by NEMA. Projected shipments were based on the lamp lifetimes, system energy use, and operating scenarios developed for the LCC analysis, as well as estimated market and substitution trends in the base case and standards case.

To estimate potential energy savings from the proposed energy conservation standard, DOE used an accounting model that calculated total end-use electricity savings in each year of a 30-year forecast. The model featured an equipment-retirement function to calculate the number of units sold in a given year, or vintage, which would still be in operation in future years. For example, some of the HID lamps sold in 2030 will operate through 2035.

DOE calculated primary energy (*i.e.,* energy used by the power plant) savings associated with end-use electricity savings using data from EIA's *AEO 2009.* These data provided an average multiplier for relating end-use electricity to primary energy use for each year from 2017 to 2030. DOE extrapolated the trend in these years to derive factors for 2031 to 2046.

5. National Consumer Impacts Analysis

DOE estimated the national economic effect on end users in terms of the NPV of cumulative benefits from 2017 to 2046. It considered the effects under the same range of scenarios as it did for estimating national energy savings. It used the new equipment costs and energy savings for each energy efficiency level that it applied in the LCC analysis. To simplify the analysis, DOE estimated the value of energy savings using the average *AEO 2009* forecast electricity price from 2017 to 2030. DOE discounted future costs and benefits by using 3 percent and 7 percent discount rate, according to the "Guidelines and Discount Rates for Benefit Analysis of Federal Programs," issued by the Office of Management and Budget in 1992 (Circular No. A–94, Revised).

C. Analysis Results

1. Engineering Analysis

As described above, DOE conducted separate analyses examining 10 representative HID lamp types, as presented in Table II.1.

TABLE II.1—REPRESENTATIVE LAMP OPTIONS

Category	Sub-category	Approximate light output *mean lumens**	Baseline *W*	Energy efficient option 1, PMH** *W*	Energy efficient option 2, HPS *W*
Medium wattage (150–500)	Probe-Start MH baseline	8,800	175	150	100
		13,700	250	175	150
		23,500	360	320	250
		25,200	400	320	250

* Mean lumens provided from manufacturers' catalogs.
** PMH = pulse-start metal halide.

In the engineering analysis, for a lamp to be considered a suitable option, its replacement had to produce at least 90 percent of the mean lumen output of the baseline system and draw less power than the baseline lamp-and-ballast system. Power was determined by the lamp-and-ballast input, based in part on the representative ballast type chosen for each option.

2. Life-Cycle Cost and Payback Period Analysis

Table II.2 to Table II.5 present the results for medium wattage probe-start MH lamps and higher-efficiency substitute HID lamps in a lamp-only replacement scenario. In this scenario, a failed baseline lamp is replaced either with an identical baseline lamp, or with a substitute lamp-and-ballast system. These analyses were based on representative, incremental lamp and fixture prices as well as maintenance costs. A full rulemaking would yield more detailed results than the

representative analyses conducted. Generally, the LCC of a high-efficiency lamp and ballast replacement is higher than the LCC of an inefficient lamp-only replacement.

TABLE II.2—175 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 175 W MH $	Substitute 1 150 W PMH $	Baseline 175 W MH $	Substitute 2 100 W HPS $
Ballast Price		190.22		234.10
Lamp Price	49.58	64.09	49.58	49.23
Total First Cost	49.58	254.31	49.58	283.33
Incremental First Cost		204.73		233.75
Annual Operating Cost	149.23	141.02	297.28	263.26
Annual Operating Cost Differential		8.21		34.02
Life-Cycle Cost (7% Discount Rate)	808.83	1,056.34	1,947.52	2,059.27
LCC Savings		−247.51		−111.75
Payback Period (years)		24.94		6.87

TABLE II.3—250 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 250 W MH $	Substitute 1 175 W PMH $	Baseline 250 W MH $	Substitute 2 150 W HPS $
Ballast Price		195.54		260.18
Lamp Price	53.08	68.76	53.08	60.91
Total First Cost	53.08	264.30	53.08	321.09
Incremental First Cost		211.22		268.01
Annual Operating Cost	178.85	149.59	330.11	288.18
Annual Operating Cost Differential		29.26		41.93
Life-Cycle Cost (7% Discount Rate)	853.30	994.23	1,983.51	2,126.51
LCC Savings		−140.93		−143.00
Payback Period (years)		7.22		6.39

TABLE II.4—360 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 360 W MH $	Substitute 1 320 W PMH $	Baseline 360 W MH $	Substitute 2 250 W HPS $
Ballast Price		226.43		211.52
Lamp Price	56.92	90.54	56.92	79.64
Total First Cost	56.92	316.97	56.92	291.16
Incremental First Cost		260.05		234.24
Annual Operating Cost	217.75	205.97	373.22	331.69
Annual Operating Cost Differential		11.78		41.53
Life-Cycle Cost (7% Discount Rate)	788.24	1,083.54	1,919.94	2,146.17
LCC Savings		−295.30		−226.23
Payback Period (years)		22.08		5.64

TABLE II.5—400 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 400 W MH $	Substitute 1 320 W PMH $	Baseline 400 W MH $	Substitute 2 250 W HPS $
Ballast Price		226.43		211.52
Lamp Price	58.08	90.54	58.08	79.64
Total First Cost	58.08	316.97	58.08	291.16
Incremental First Cost		258.89		233.08
Annual Operating Cost	237.74	205.97	395.37	331.69
Annual Operating Cost Differential		31.77		63.68
Life-Cycle Cost (7% Discount Rate)	810.40	1,083.54	1,937.06	2,146.17
LCC Savings		−273.14		−209.11

TABLE II.5—400 W PROBE-START MH BASELINE—Continued

	Industrial/interior		Commercial/exterior	
	Baseline 400 W MH $	Substitute 1 320 W PMH $	Baseline 400 W MH $	Substitute 2 250 W HPS $
Payback Period (years)		8.15		3.66

Table II.6 to Table II.69 present the results for medium wattage probe-start MH lamps and higher-efficiency substitute HID lamps in a new construction or fixture replacement scenario. In this scenario, a consumer selects either a baseline or substitute fixture and lamp. In the exterior lighting cases, the HPS substitutes have a lower LCC. These analyses were based on representative and incremental lamp and fixture prices as well as maintenance costs. A full rulemaking would yield more detailed results than the representative analyses conducted.

TABLE II.6—175 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 175 W MH $	Substitute 1 150 W PMH $	Baseline 175 W MH $	Substitute 2 100 W HPS $
Fixture Price (incl. ballast)	260.51	310.10	356.51	376.34
Lamp Price	49.58	64.09	49.58	49.23
Total First Cost	310.09	374.19	406.09	425.57
Incremental First Cost		64.10		19.73
Annual Operating Cost	149.23	141.02	297.28	263.26
Annual Operating Cost Differential		8.21		34.02
Life-Cycle Cost (7% Discount Rate)	1,069.34	1,176.22	2,304.03	2,201.51
LCC Savings		−106.89		102.52
Payback Period (years)		7.81		0.58

TABLE II.7—250 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 250 W MH $	Substitute 1 175 W PMH $	Baseline 250 W MH $	Substitute 2 150 W HPS $
Fixture Price (incl. ballast)	297.77	325.63	393.77	382.01
Lamp Price	53.08	68.76	53.08	60.91
Total First Cost	350.85	394.39	446.85	442.92
Incremental First Cost		43.54		−3.93
Annual Operating Cost	178.85	149.59	330.11	288.18
Annual Operating Cost Differential		29.26		41.93
Life-Cycle Cost (7% Discount Rate)	1,151.07	1,124.32	2,377.28	2,248.34
LCC Savings		26.75		128.94
.				
Payback Period (years)		1.49		−0.09

TABLE II.8—360 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 360 W MH $	Substitute 1 320 W PMH $	Baseline 360 W MH $	Substitute 2 250 W HPS $
Fixture Price (incl. ballast)	352.43	415.69	448.43	393.34
Lamp Price	56.92	90.54	56.92	79.64
Total First Cost	409.35	506.23	505.35	472.98
Incremental First Cost		96.88		−32.37
Annual Operating Cost	217.75	205.97	373.22	331.69
Annual Operating Cost Differential		11.78		41.53
Life-Cycle Cost (7% Discount Rate)	1,140.67	1,272.81	2,368.37	2,328.00
LCC Savings		−132.14		40.37
Payback Period (years)		8.22		−0.78

TABLE II.9—400 W PROBE-START MH BASELINE

	Industrial/interior		Commercial/exterior	
	Baseline 400 W MH $	Substitute 1 320 W PMH $	Baseline 400 W MH $	Substitute 2 250 W HPS $
Fixture Price (incl. ballast)	372.31	415.69	468.31	393.34
Lamp Price	58.08	90.54	58.08	79.64
Total First Cost	430.39	506.23	526.39	472.98
Incremental First Cost		75.84		−53.41
Annual Operating Cost	237.74	205.97	395.37	331.69
Annual Operating Cost Differential		31.77		63.68
Life-Cycle Cost (7% Discount Rate)	1,182.71	1,272.81	2,405.37	2,328.00
LCC Savings		−90.10		77.37
Payback Period (years)		2.39		−0.84

3. National Energy Savings and Consumer Impacts

DOE estimated national energy savings and consumer effects of energy conservation standards for the considered HID lamps using its own engineering analysis data. DOE assumed that energy conservation standards would take effect in 2017, and estimated cumulative energy savings and NPV impacts relative to a base case and a standards case.

The results using DOE's analysis of design options indicate cumulative energy savings for medium-wattage HID lamps of 2.8 quads and a corresponding NPV of $15.0 billion (2009$) at a 3 percent discount rate and $3.5 billion at a 7 percent discount rate over a 30-year analysis period (2017–2046).

In estimating the NPV, DOE estimated the fraction of replacements that would use the different technologies and would be either a lamp-only or a total fixture replacement. While some replacements would have negative LCC, on a national scale these are outweighed by those lamp and fixture replacements that have positive economic impacts on consumers.

D. Discussion

1. Technological Feasibility

Section 346(a)(1) of EPCA (42 U.S.C. 6317(a)(1)) mandates that DOE determine whether energy conservation standards for HID lamps would be "technologically feasible." DOE proposes to determine that energy conservation standards for HID lamps would be technologically feasible because they can be satisfied with HID lighting systems that are currently available on the market.

2. Significance of Energy Savings

Section 346(a)(1) of EPCA (42 U.S.C. 6317(a)(1)) mandates that DOE determine whether energy conservation standards for HID lamps would result in "significant energy savings." Today's proposed determination estimates that a standard for HID lamps would result in energy savings of at least 2.8 quads over a 30-year analysis period (2017–2046). Although the term "significant" is not defined in the Act, the U.S. Court of Appeals for the District of Columbia, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (DC Cir. 1985), indicated that Congress intended "significant" energy savings in a manner consistent with section 325 of the Act (42 U.S.C. 6295(o)(3)(B)) to be savings that were not "genuinely trivial." DOE published two other determinations in 2006 (Small Electric Motors, 71 FR 38799, 38806 (July 10, 2006)) and 2009 (Non-Class A External Power Supplies, 74 FR 56928, 56929 (November 3, 2009)) for other equipment and products that had significant savings. DOE's determination for small electric motors estimated energy savings of 0.61 to 0.78 quads over a 20-year period and therefore met the threshold for "significant." In the small electric motors determination, DOE used analysis for room air conditioners as a precedent, finding that savings of 0.36 to 0.96 quads over a 30-year period met the requirement for a standard. 62 FR 50122, 50142 (September 24, 1997). DOE's analysis in the determination for Non-Class A External Power Supplies resulted in 0.14 quads of energy over 30 years (2013–2042), and DOE deemed those energy savings as "significant." In the 2009 final rule for energy conservation standards for refrigerated bottled or canned beverage vending machines, DOE estimated that 0.159 quads would be saved over 30 years (2012–2042). 74 FR 44914, 44915 (August 31, 2009). DOE believes that the estimated energy savings of 2.8 quads over 30 years for the considered HID lamps are not "genuinely trivial," and DOE proposes to determine that potential energy conservation standards for HID lamps would result in significant energy savings.

3. Economic Justification

Section 346(b)(1) of EPCA requires that energy conservation standards for HID lamps be economically justified. (42 U.S.C. 6317(b)(1)) Using the methods and data described in section II.B, DOE conducted a LCC analysis to estimate the net benefits to users from increased efficiency in the considered HID lamps. DOE then aggregated the results from the LCC analysis to estimate national energy savings and national economic impacts. DOE estimated that the net present value of the consumer costs and benefits from a potential standard are $15.0 billion and $3.5 billion at three percent and seven percent discount rates respectively. Thus, DOE proposes to determine that potential energy conservation standards for HID lamps are economically justified.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination is not subject to review under Executive Order (E.O.) 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also,

as required by E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (February 19, 2003). DOE made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov.*

DOE reviewed today's proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003.

Today's proposed determination, if adopted, would set no standards; it would only positively determine that future standards may be warranted and should be explored in an energy conservation standards rulemaking. Economic impacts on small entities would be considered in the context of such a rulemaking. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed determination, which proposes to determine that the development of energy conservation standards for HID lamps is warranted, would impose no new information or record keeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to positively determine that future standards may be warranted and that environmental impacts should be explored in an energy conservation standards rulemaking. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time. NEPA review can only be initiated "as soon as environmental impacts can be meaningfully evaluated" (10 CFR 1021.213(b)). Because this proposed determination would only determine that future standards may be warranted, but would not propose to set any standard, DOE has determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

E.O. 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today's proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy is also available at *http://www.gc.doe.gov*). Today's proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these UMRA requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

The Treasury and General Government Appropriation Act of 2001 (44 U.S.C. 3516, note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's action proposing to determine that development of energy conservation standards for HID lamps may be warranted would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of E.O. 12866, or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information." The Bulletin defines "influential scientific information" as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." 70 FR 2667 (January 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses, and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. The "Energy Conservation Standards Rulemaking Peer Review Report," dated February 2007, has been disseminated and is available at *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

IV. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine, by June 30, 2010, whether energy conservation standards for HID lamps are warranted.

Comments, data, and information submitted to DOE's e-mail address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

According to 10 CFR Part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document should have all the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comments

Comments are welcome on all aspects of this proposed determination. DOE is particularly interested in receiving comment from interested parties on the following issues as they relate to HID lamps:

- Applications not included in the proposed determination analysis;
- Definition of high-pressure sodium lamps;
- Equipment (including lamp, ballast, and fixture) lifetimes;
- Possible negative effects on small businesses;
- Present-year shipments estimates;
- Present-year efficiency distributions;
- Market-growth forecasts;

- Usage profiles;
- Technology options for increasing efficiency;
- Costs related to increasing efficiency;
- Equipment cost;
- Maintenance costs;
- Unit energy consumption calculations and values; and
- Alternative sources, databases, and methodologies for the analyses and inputs used in this proposed determination.

V. Approval of the Office of the Assistant Secretary

The Assistant Secretary of DOE's Office of Energy Efficiency and Renewable Energy has approved publication of this proposed determination.

List of Subjects in 10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on April 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–9714 Filed 4–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0449; Directorate Identifier 2009–SW–38–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. (Agusta) Model A109E Helicopters

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose adopting a new airworthiness directive (AD) for the Agusta Model A109E helicopters. This proposed AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that after a report of an electrical failure, an investigation revealed inadequate functioning of the 35 amperes (Amps) battery bus (BATT BUS) circuit breaker that was not within design requirements. These actions are intended to replace the 35 Amps with a 50 Amps circuit breaker and replace the wires with oversized ones to prevent an electrical failure, loss of electrical power, and subsequent loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by May 27, 2010.

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

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

You may get the service information identified in this proposed AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

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

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Mark Wiley, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written data, views, or arguments about this proposed AD. Send your comments to an address listed in the **ADDRESSES** section of this proposal. Include "Docket No. FAA–2010–0449; Directorate Identifier 2009–SW–38–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2009–0137, dated June 23, 2009, to correct an unsafe condition for the Agusta Model A109E helicopters.

Following a report of an electrical failure, Agusta investigated the electrical power generation system and identified inadequate functioning of the 35 Amps BATT BUS circuit breaker. To prevent an electrical failure, the manufacturer has developed a BATT BUS circuit breaker modification kit for replacing the 35 Amps circuit breaker with a 50 Amps circuit breaker and replacing the wires with oversized ones. You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

Agusta has issued Bollettino Tecnico No. 109EP–98, dated June 22, 2009, that specifies modifying the BATT BUS circuit breaker installation. The service information specifies modifying the fuselage electrical installation, part number (P/N) 109–0741–49, and the overhead panel electrical installation, P/N 109–0741–55, with a BATT BUS circuit breaker modification kit, P/N 109–0824–73–101. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

This model helicopter has been approved by the aviation authority of Italy and is approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI AD. We are proposing this AD

because we evaluated the information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Differences Between This AD and the MCAI AD

We refer to flight hours as hours time-in-service. Also, we do not refer to a calendar compliance date of December 31, 2009, because the effective date of this AD would be later than that date.

Costs of Compliance

We estimate that this AD would affect about 73 helicopters of U.S. registry. We also estimate that it would take about 5 work-hours per helicopter to modify the BATT BUS circuit breaker installation. The average labor rate is $85 per work-hour. Required parts will cost about $700 for the BATT BUS circuit breaker kit. Based on these figures, we estimate the cost of this AD on U.S. operators would be $82,125, assuming the entire fleet is modified.

Authority for This Rulemaking

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

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

Regulatory Findings

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

Therefore, I certify this proposed AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AGUSTA S.p.A.: Docket No. FAA–2010–0449; Directorate Identifier 2009–SW–38–AD.

Comments Due Date

(a) We must receive your comments by May 27, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Agusta Model A109E helicopters, all serial numbers up to and including serial number (S/N) 11758 (except S/N 11741, 11754, and 11757) modified with a circuit breaker modification kit, part number (P/N) 109–0812–04–101, –103, –107, or –109; certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states after a report of an electrical failure, an investigation revealed inadequate functioning of the 35 amperes (Amps) battery bus (BATT BUS) circuit breaker.

Actions and Compliance

(e) Within 50 hours time-in-service, unless already done, modify the fuselage electrical installation, P/N 109–0741–49, and the overhead panel electrical installation, P/N 109–0741–55 with a BATT BUS circuit breaker modification kit, P/N 109–0824–73–101, as depicted in Figures 1 and 2 and by following the Compliance Instructions, paragraphs 2 through 20.7, of Agusta Bollettino Tecnico No. 109EP–98, dated June 22, 2009.

Differences Between This AD and the MCAI AD

(f) We refer to flight hours as hours time-in-service. Also, we do not refer to a calendar compliance date of December 31, 2009, because the effective date of this AD would be later than that date.

Other Information

(g) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, ATTN: DOT/FAA Southwest Region, Mark Wiley, ASW–111, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5114, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) EASA MCAI AD No. 2009–0137, dated June 23, 2009, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) The JASC Code is 2460: Electrical Power Systems.

Issued in Fort Worth, Texas, on April 7, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–9696 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0399; Airspace Docket No. 10–AGL–3]

Proposed Establishment of Class E Airspace; Paynesville, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Paynesville, MN. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Paynesville Municipal Airport, Paynesville, MN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before June 11, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building

Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0399/Airspace Docket No. 10–AGL–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0399/Airspace Docket No. 10–AGL–3." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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, 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, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Paynesville Municipal Airport, Paynesville, MN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Paynesville Municipal Airport, Paynesville, MN.

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, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Paynesville, MN [New]

Paynesville Municipal Airport, MN
(Lat. 45°22′19″ N., long. 94°44′41″ W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Paynesville Municipal Airport.

Issued in Fort Worth, TX, on April 19, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–9746 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0400; Airspace Docket No. 10–ACE–3]

Proposed Establishment of Class E Airspace; Syracuse, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Syracuse, KS. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Syracuse—Hamilton County Municipal Airport, Syracuse, KS. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Comments must be received on or before June 11, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0400/Airspace Docket No. 10–ACE–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0400/Airspace Docket No. 10–ACE–3." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

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, 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, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by establishing Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Syracuse—Hamilton County Municipal Airport, Syracuse, KS. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Syracuse—Hamilton County Municipal Airport, Syracuse, KS.

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, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Syracuse, KS [New]

Syracuse—Hamilton County Municipal Airport, KS
(Lat. 37°59′30″ N., long. 101°44′47″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Syracuse—Hamilton County Municipal Airport.

Issued in Fort Worth, TX on April 19, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–9749 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Intent To Initiate Consultation and Coordinate the National Oceanic and Atmospheric Administration's Responsibilities Under Section 106 of the National Historic Preservation Act (NHPA) With the Ongoing National Environmental Policy Act (NEPA) Process Supporting the Review of the Olympic Coast National Marine Sanctuary Management Plan

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Consultation under Section 106 of the NHPA in conjunction with Review of Management Plan/ Regulations and associated NEPA public process.

SUMMARY: In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) has initiated a review of the Olympic Coast National Marine Sanctuary (OCNMS or sanctuary) management plan, to evaluate substantive progress toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA (73 FR 53161). The management plan review process occurs concurrently with a public process under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). This notice confirms that NOAA will coordinate its responsibilities under NEPA with those under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470).

DATES: Comments may be submitted at any time.

ADDRESSES: Written comments may be sent to the Olympic Coast National Marine Sanctuary (Management Plan Review), 115 Railroad Ave. East, Suite 301, Port Angeles, WA 98362, or faxed to (360) 457–8496. Electronic comments may be sent to *ocnmsmanagementplan@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: George Galasso, 360.457.6622 Ext. 12, *ocnmsmanagementplan@noaa.gov.*

SUPPLEMENTARY INFORMATION: OCNMS was designated in May 1994. It spans 3,310 square miles of marine waters off the rugged Olympic Peninsula coast, covering much of the continental shelf and the heads of several major submarine canyons. The present management plan was written as part of the sanctuary designation process and published in the Final Environmental Impact Statement in 1993.

In September 2008, NOAA published a Notice of Intent to prepare an Environmental Impact Statement under the authority of NEPA (73 FR 53161). The management plan review process is composed of four major stages: (1) Information collection and characterization; (2) preparation and release of a draft management plan/ environmental impact analysis document; (3) public review and comment; (4) preparation and release of a final management plan/environmental impact analysis document, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately thirty-six months from the date of publication of the original notice of intent (37 FR 53161; September 15, 2008). The proposed revised management plan will likely involve changes to existing policies of the Sanctuary in order to address contemporary issues and challenges, and to better protect and manage the Sanctuary's natural resources and qualities and historic properties.

This notice confirms that NOAA will coordinate its responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) with its ongoing NEPA process, pursuant to 36 CFR 800.8(a)—coordination with NEPA—including the use of NEPA documents and public and stakeholder meetings to also meet the section 106 requirements. The NHPA specifically applies to any agency undertaking that has an adverse effect on historic properties. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: "any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe * * * and that meet the National Register criteria."

In coordinating its responsibilities under the NHPA and NEPA, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the Washington State Historic Preservation Officer, appropriate Tribal Historic Preservation Officers, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA's NEPA procedures, and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties and describe them in any Environmental Assessment or Draft Environmental Impact Statement.

Authority: 16 U.S.C. 1431 *et seq.;* 16 U.S.C. 470.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: April 15, 2010.

Daniel J. Basta,

Director for the Office of National Marine Sanctuaries.

[FR Doc. 2010–9203 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–NK–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 52 AND 81

[EPA–R05–OAR–2009–0730; FRL–9142–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of the Manitowoc County and Door County Areas to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Wisconsin's requests to redesignate the Manitowoc County and Door County, Wisconsin nonattainment areas, to attainment for the 1997 8-hour ozone standard, because the requests meet the statutory requirements for redesignation under the Clean Air Act (CAA). The Wisconsin Department of Natural Resources (WDNR) submitted these requests on September 11, 2009.

These proposed approvals involve several related actions. EPA is proposing to determine that the Manitowoc County and Door County areas have attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). These determinations are based on three years of complete, quality-assured and certified ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas. Complete, quality-assured air quality data for the 2009 ozone season have been recorded in the EPA's Air Quality System (AQS) and show that the areas continue to attain the 8-hour ozone standard. EPA is also proposing to approve, as revisions to the Wisconsin State Implementation Plan (SIP), the State's plans for maintaining the 8-hour ozone NAAQS through 2020 in the areas.

EPA is proposing to approve the 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the base year emissions inventory requirement of the CAA. WDNR submitted these base year emissions inventories on June 12, 2007. Finally, EPA finds adequate and is proposing to approve the State's 2012 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Manitowoc County and Door County areas.

DATES: Comments must be received on or before May 27, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0730, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bortzer.jay@epa.gov.*
3. *Fax:* (312) 692–2054.
4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office 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 No. EPA–R05–OAR–2009–0730. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of this document, "What Should I Consider as I Prepare My Comments for EPA?"

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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What actions is EPA proposing to take?

EPA is proposing to take several related actions. EPA is proposing to determine that the Manitowoc County and Door County nonattainment areas have attained the 1997 8-hour ozone

standard and that the areas have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve the requests from WDNR to change the legal designation of the Manitowoc County and Door County areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve, as revisions to the Wisconsin SIP, the State's maintenance plans (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Manitowoc County and Door County areas in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the requirements of section 172(c)(3) of the CAA. If EPA's determination of attainment is finalized, under the provisions of 40 CFR 51.918, the requirement to submit certain planning SIPs related to attainment (the Reasonably Available Control Measure (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and would cease to be applicable upon redesignation. In addition, as set forth in more detail below, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. Finally, EPA finds adequate and is proposing to approve the newly-established 2012 and 2020 MVEBs for the Manitowoc County and Door County areas. The adequacy comment period for the MVEBs began on February 24, 2010, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on March 26, 2010. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated April 7, 2010, EPA informed WDNR that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses. *Please see* section VI.B. of this rulemaking, "Adequacy of Wisconsin's MVEBs," for further explanation of this process. Therefore, we find adequate, and are proposing to approve, the State's 2012 and 2020 MVEBs for transportation conformity purposes.

III. What is the background for these actions?

A. What is the general background information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56852), the Manitowoc County and Door County areas were designated as moderate and rural transport nonattainment areas, respectively, under the 1-hour ozone NAAQS. The Manitowoc County and Door County areas were subsequently redesignated to attainment of the 1-hour standard on April 17, 2003 (68 FR 18883). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Manitowoc County and Door County areas were designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, of the CAA; 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides additional and more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.* the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Manitowoc County and Door County areas were designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23947), based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I, provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. *See* 40 CFR part 50, Appendix I, 2.3(d).

The WDNR submitted requests to redesignate the Manitowoc County and Door County areas to attainment for the 8-hour ozone standard on September 11, 2009. The redesignation requests included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Manitowoc County and Door County areas. Complete, quality-assured monitoring data in AQS but not yet certified for the 2009 ozone season show that the areas continue to attain the 8-hour ozone standard. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. In May 2008, States, environmental groups and industry groups filed petitions with the DC Circuit Court of Appeals for review of the 2008 ozone standards. In March 2009, the court granted EPA's request to stay the litigation so EPA could review the standards and determine whether they should be reconsidered. On September 16, 2009, we announced that we are reconsidering our 2008 decision setting national standards for ground-level ozone. The designation process for that standard has been stayed. On January 19, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to

0.070 ppm, rather than at 0.075 ppm (75 FR 2938). We expect by August 2010 to have completed our reconsideration of the standard and also expect that thereafter we will proceed with designations. The actions addressed in today's proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What are the impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals decisions regarding EPA's Phase 1 implementation rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA (South Coast),* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007, decision clarified that the court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the court's rulings on these proposed redesignation actions. For the reasons set forth below, EPA does not believe that the court's rulings alter any requirements relevant to these redesignation actions so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing these redesignations. EPA believes that the court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of these areas to attainment, because even in light of the court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009, proposed rulemaking in response to the *South Coast* decision, EPA has proposed to classify Door County and Manitowoc County under subpart 2 as moderate and marginal areas, respectively (74 FR 2936, 2944). If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due, a deadline that EPA has proposed to be one year after the effective date of a final rulemaking classifying areas as moderate or marginal (74 FR 2940–2941). Although a future final decision by EPA to classify these areas under subpart 2 would trigger additional future requirements for the areas, EPA believes that this does not mean that redesignations cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and, (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future.

First, at the time the redesignation requests were submitted, the Manitowoc County and Door County areas were not classified under subpart 2, nor were there any subpart 2 requirements yet due for these areas. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* September 4, 1992, Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division). *See also* Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld EPA's redesignation rulemaking applying this interpretation. *See, e.g.* also 68 FR 25418, 25424, 25427 (May 12, 2003) (Redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club* v. *Whitman,* 285 F.3d 63 (DC Cir. 2002), the DC Circuit upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The court stated: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly here it would be unfair to penalize the areas by applying to them, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time WDNR submitted its redesignation requests.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Manitowoc County and Door County areas were attainment areas subject to CAA section 175A maintenance plans under the 1-hour standard at the time that the 1-hour standard was revoked. Therefore, the DC Circuit's decisions with respect to 1-hour nonattainment anti-backsliding requirements do not impact redesignation requests for these types of areas, except to the extent that the court

in its June 8, 2007, decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the court found were not properly retained, the Manitowoc County and Door County areas are attainment areas subject to maintenance plans for the 1-hour standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to areas that have been redesignated to attainment of the 1-hour standard.

Thus, the *South Coast* decision in South Coast Air Quality Management Dist. does not preclude EPA from finalizing the redesignation of these areas.

IV. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

"Ozone and Carbon Monoxide Design Value Calculations," Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

"Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

"Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

"Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

"State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

"Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

"State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

"Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

"Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

"Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. What is the effect of these actions?

Approval of the redesignation requests would change the official designations of the Manitowoc County and Door County areas for the 1997 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Wisconsin SIP plans for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plans include contingency measures as required under CAA section 175A to remedy future violations of the 8-hour NAAQS. They also establish MVEBs for the Manitowoc County area of 1.76 and 1.25 tons per day (tpd) for VOC and 3.76 and 1.86 tpd for NO_X for the years 2012 and 2020, respectively, and MVEBs for the Door County area of 0.78 and 0.53 tpd for VOC and 1.55 and 0.74 tpd for NO_X for the years 2012 and 2020, respectively.

VI. What is EPA's analysis of the request?

A. Attainment Determinations and Redesignations

EPA is proposing to determine that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone standard and that the areas have met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA's proposed approvals of the redesignation requests is as follows:

1. The Areas Have Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make determinations that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone NAAQS. An area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AQS. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Wisconsin included in its redesignation requests ozone monitoring data for the 2006 to 2008 ozone seasons and has subsequently provided monitoring data for 2009. Monitoring data for 2006 through 2008 have been certified by the State; 2009 data have

not yet been certified. However, Wisconsin has quality-assured all of the ambient monitoring data in accordance with 40 CFR 58.10, and has recorded it in the AQS database. The data meet the completeness criteria in 40 CFR 50, Appendix I, which require a minimum completeness of 75 percent annually and 90 percent over each three-year period. Monitoring data are presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

Monitor	2006 4th high (ppm)	2007 4th high (ppm)	2008 4th high (ppm)	2009 4th high (ppm)	2006–2008 average (ppm)	2007–2009 average (ppm)
Door 55–029–0004	0.079	0.092	0.069	0.075	0.080	0.078
Manitowoc 55–071–0007	0.078	0.085	0.064	0.078	0.075	0.075

In addition, as discussed below with respect to the maintenance plans, WDNR has committed to continue to operate an EPA-approved monitoring network in the areas. WDNR will continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into AQS in accordance with Federal guidelines. In summary, EPA believes that the data show that the Manitowoc County and Door County areas have attained the 8-hour ozone NAAQS.

2. The Areas Have Met All Applicable Requirements Under Section 110 and Part D; and the Areas Have Fully Approved SIPs Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Wisconsin has met all currently applicable SIP requirements for purposes of redesignation for the Manitowoc County and Door County areas under section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Wisconsin SIP meets all SIP requirements for these areas currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the base year emissions inventories, we have approved all applicable requirements of the Wisconsin SIP for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Wisconsin's 2005 base year emissions inventories as meeting the section 172(c)(3) emissions inventory requirement for the areas.

In proposing these determinations, we have ascertained which SIP requirements are applicable to the areas for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are, or upon final approval of the emissions inventories, will be fully approved under section 110(k) of the CAA. As discussed more fully below, for purposes of evaluating a redesignation request, SIPs must be fully approved only with respect to requirements that became due prior to the submission of the redesignation request.

The September 4, 1992, Calcagni memorandum (*see* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a State and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the State's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (Redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA is proposing here to determine that the areas have attained the 1997 8-hour ozone standard, under 40 CFR 51.918, if these determinations are finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (c)(6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA), would not be applicable to the areas as long as they continue to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.").

a. The Manitowoc County and Door County Areas Have Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

i. Section 110 General SIP requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and, among other things, must: Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provide for implementation of a source permit

program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures that we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Wisconsin's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Wisconsin SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.2570). Further, in a submittal dated December 12, 2007, Wisconsin confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on this submittal; however, such approval is not necessary for redesignation.

ii. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the base year emissions inventories discussed in section VI.C. of this rulemaking, the Wisconsin SIP will meet the applicable SIP requirements for the Manitowoc County and Door County areas applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Since the Manitowoc County and Door County areas were not classified under subpart 2, of Part D at the time the redesignation requests were submitted, the subpart 2 requirements do not apply for purposes of evaluating the State's redesignation requests. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

Subpart 1 Section 172 Requirements

For purposes of evaluating these redesignation requests, the applicable section 172 SIP requirements for the Manitowoc County and Door County areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.918).

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Manitowoc County and Door County areas have monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Manitowoc County and Door County areas have attained the ozone NAAQS and are no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Wisconsin submitted 2005 base year emissions inventories on June 12, 2007. As discussed below in section VI.C., EPA is proposing to approve the 2005 base year inventories as meeting the section 172(c)(3) emissions inventory requirement for the Manitowoc County and Door County areas.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Wisconsin's current NSR program on December 17, 2008 (73 FR 76558 and 76560). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a nonattainment NSR program be

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. Wisconsin was not included in EPA's NO_X SIP Call.

approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Wisconsin has demonstrated that the Manitowoc County and Door County areas will be able to maintain the standard without part D NSR in effect; therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Manitowoc County and Door County areas upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Wisconsin SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See also* 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996 (61 FR 39329), and August 27, 1996 (61 FR 43970), respectively. Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEALU), which was signed into law on August 10, 2005 (Pub. L. 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for State conformity SIPs. Wisconsin is in the process of updating its transportation conformity SIP to meet these new requirements. Wisconsin has submitted onroad MVEBs for the Manitowoc County area of 1.76 and 1.25 tpd VOC and 3.76 and 1.86 tpd NO_X for the years 2012 and 2020, respectively and MVEBs for the Door County area of 0.78 and 0.53 tpd VOC and 1.55 and 0.74 tpd NO_X for the years 2012 and 2020, respectively. The areas must use the MVEBs from the maintenance plans in any conformity determination that is effective on or after the effective date of the adequacy finding and/or the maintenance plans' approval.

b. The Manitowoc County and Door County Areas Have Fully Approved Applicable SIPs under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventories, EPA will have fully approved the Wisconsin SIP for the Manitowoc County and Door County areas under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Wisconsin has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under the 1-hour ozone standard. In this action, EPA is proposing to approve Wisconsin's 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the requirement of section 172(c)(3) of the CAA. No Manitowoc County or Door County area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Wisconsin has demonstrated that the observed air quality improvement in the Manitowoc County and Door County areas is due to permanent and enforceable reductions in emissions resulting from implementation of the SIPs, Federal measures, and other State-adopted measures.

In making this demonstration, WDNR has calculated the change in emissions between 2002 and 2007. Wisconsin developed an emissions inventory for 2002, one of the years used to designate the areas as nonattainment. The State developed an attainment inventory for 2007, one of the years the Manitowoc County and Door County areas monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Manitowoc and Door Counties and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. Federal Emission Control Measures

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Some of these emission reductions occurred by the 2007–2009 period used to demonstrate attainment, and additional emission reductions will occur during the maintenance period.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in July 2000. This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007 which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and busses.

Non-Road Diesel Rule. EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

Maximum Achievable Control Technology (MACT) Rules. EPA has promulgated numerous MACT standards, many of which limit VOC emissions. Compliance began for many of the MACT rules from late 2005 through 2007.

ii. Control Measures in Upwind Areas

NO_X Reasonably Available Control Technology (RACT). Wisconsin adopted NO_X RACT regulations for the upwind Milwaukee-Racine area. The emission requirements apply to stationary combustion units at major sources, with compliance required by May 1, 2009. The RACT rule is estimated to achieve reductions of over 29,000 tpy of NO_X emissions from 2002 levels.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 States to reduce emissions of NO_X. Affected States were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Manitowoc County and Door County areas. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

b. Emission Reductions

States are required to develop periodic emissions inventories every three years. (40 CFR part 51, subpart A). Wisconsin is using the periodic emissions inventory from 2002 as the nonattainment inventory. Point source sector emissions inventories were developed using reported point source emissions, EPA's Clean Air Markets database and approved EPA techniques for emissions calculations. Emissions were estimated by collecting process-level information from each facility that qualifies for inclusion into WDNR's point source database. Process, boiler, fugitive and tank emissions were typically calculated using throughput information multiplied by an emission factor for the process. Emission factor sources included mass balance, stack testing, continuous emissions monitors, engineering judgment and EPA's Factor Information Retrieval database.

Area source emissions were generated by backcasting from the 2005 periodic emissions inventory to minimize differences between the nonattainment and attainment inventories due to changes in methodology. The backcasting factors were based on 2002–2008 growth factors including the Census Bureau's County Business Pattern employment data, growth factors developed for the Lake Michigan Air Directors Consortium (LADCO) by E.H. Pechan & Associates, Inc. (Pechan); and the Economic Growth Analysis System (EGAS6.0). Area source emissions estimates for the 2005 periodic inventory were calculated using population, gasoline consumption, employment, crop acreages, and other activity surrogates. The results of an EPA Solvent Mass Balance study were used to estimate emissions for some categories. Emission factors were derived from local data, local or national surveys and EPA guidance for the development of emissions inventories. Point source emissions were subtracted from total category specific area source emissions to prevent double counting.

Nonroad mobile source emissions were calculated using EPA's National Mobile Inventory Model (NMIM) and emissions estimates developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM. Before NMIM was run, the following modifications and additions were made to the NMIM input data: (1) Revised activity data for construction equipment using updates provided by Pechan; (2) revised allocation data for recreational marine equipment using updates provided by ENVIRON International Corporation (ENVIRON); (3) added emission factors for diesel tampers/rammers provided by Pechan; (4) revised population data for construction and recreational marine equipment using updates provided by Pechan and ENVIRON, respectively; (5) revised growth rates using updates provided by Pechan; and (6) revised gasoline parameters, including Reid Vapor Pressure, oxygenate content and sulfur content, using updates provided by the States and Pechan. Onroad mobile source emissions were calculated using the MOBILE6.2 emissions model.

Wisconsin developed a 2007 attainment year inventory using the methodologies described above to estimate point, nonroad mobile and onroad mobile sector emissions. Area source emissions were generated by applying growth factors and applicable emission controls to the 2005 area source sector inventory. Growth factors include the Census Bureau's County Business Pattern employment data, growth factors developed for LADCO by Pechan; and EGAS6.0.

Using the inventories described above, Wisconsin's submittal documents changes in VOC and NO_X emissions from 2002 to 2007 for the Manitowoc County and Door County areas. Because Manitowoc and Door Counties are impacted by transport, WDNR also documented emissions reductions for the upwind Wisconsin areas of Sheboygan and Milwaukee-Racine. Emissions data are shown in Tables 2 through 6 below.

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Table 2. VOC and NO_X Emissions for Nonattainment Year 2002 (tpd)

Area	VOC					NOx				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.23	1.57	1.39	9.63	12.82	0.01	0.19	2.68	6.74	9.62
Manitowoc	1.58	4.63	3.26	3.59	13.06	2.83	0.42	7.41	4.21	14.87
Sheboygan	2.50	7.59	3.76	5.62	19.47	26.07	1.00	8.25	4.47	39.79
Milwaukee-Racine	14.72	106.61	45.36	61.19	227.88	114.73	12.87	103.18	51.94	282.72

Table 3. VOC and NO_X Emissions for Attainment Year 2007 (tpd)

Area	VOC					NOx				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.30	1.51	0.93	8.85	11.59	0.002	0.20	1.97	5.28	7.452
Manitowoc	1.43	4.39	2.24	3.15	11.21	3.13	0.43	5.38	3.61	12.55
Sheboygan	2.26	7.08	2.50	5.02	16.86	12.99	1.04	5.81	3.73	23.57
Milwaukee-Racine	12.20	98.55	31.39	48.45	190.59	41.69	13.30	73.21	45.66	173.86

Table 4. Comparison of 2002 and 2007 VOC and NO_X Emissions for Manitowoc County (tpd)

	VOC			NOx		
	2002	2007	Net Change (2002-2007)	2002	2007	Net Change (2002-2007)
Point	1.58	1.43	-0.15	2.83	3.13	0.30
Area	4.63	4.39	-0.24	0.42	0.43	0.01
Onroad	3.26	2.24	-1.02	7.41	5.38	-2.03
Nonroad	3.59	3.15	-0.44	4.21	3.61	-0.60
Total	13.06	11.21	-1.85	14.87	12.55	-2.32

Table 5. Comparison of 2002 and 2007 VOC and NO_X Emissions for the Door County (tpd)

	VOC			NOx		
	2002	2007	Net Change (2002-2007)	2002	2007	Net Change (2002-2007)
Point	0.23	0.30	0.07	0.01	0.002	-0.01
Area	1.57	1.51	-0.06	0.19	0.20	0.01
Onroad	1.39	0.93	-0.46	2.68	1.97	-0.71
Nonroad	9.63	8.85	-0.78	6.74	5.28	-1.46
Total	12.82	11.59	-1.23	9.62	7.452	-2.17

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Table 6. Comparison of 2002 and 2007 VOC and NO_X Emissions for Upwind Sheboygan and Milwaukee-Racine Areas (tpd)

	VOC			NOx		
	2002	2007	Net Change (2002-2007)	2002	2007	Net Change (2002-2007)
Point	17.22	14.46	-2.76	140.80	54.68	-86.12
Area	114.20	105.63	-8.57	13.87	14.34	0.47
Onroad	49.12	33.89	-15.23	111.43	79.02	-32.41
Nonroad	66.81	53.47	-13.34	56.41	49.39	-7.02
Total	247.35	207.45	-39.90	322.51	197.43	-125.08

Table 4 shows that the Manitowoc County area reduced VOC emissions by 1.85 tpd and NO_X emissions by 2.32 tpd between 2002 and 2007. Table 5 shows that the Door County area reduced VOC emissions by 1.23 tpd and NO_X emissions by 2.17 tpd between 2002 and 2007. In addition, as shown in Table 6, the upwind areas of Sheboygan and Milwaukee-Racine reduced VOC emissions by 39.90 tpd and NO_X emissions by 125.08 tpd between 2002 and 2007. Based on the information summarized above, Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its requests to redesignate the Manitowoc County and Door County nonattainment areas to attainment status, Wisconsin submitted SIP revisions to provide for the maintenance of the 8-hour ozone NAAQS in the areas through 2020.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: the attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The WDNR developed emissions inventories for 2007, one of the years used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 3, above.

c. Demonstration of Maintenance

Along with the redesignation requests, WDNR submitted revisions to the Wisconsin 8-hour ozone SIP to include maintenance plans for the Manitowoc County and Door County areas, as required by section 175A of the CAA. These demonstrations show maintenance of the 8-hour ozone standard through 2020 by showing that current and future emissions of VOC and NO_X for the areas remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Wisconsin is using emissions inventory projections for the years 2012 and 2020 to demonstrate maintenance. Emissions estimates were generated for point sources, area sources, and the MAR portion of the nonroad mobile sector by applying growth factors and applicable emission controls to the 2005 emissions inventory. The 2005 emissions inventory was developed following the same methodologies described for the 2002 inventory, in section VI.A.3.b., above. Growth factors include the Census Bureau's County Business Pattern employment data, growth factors developed for LADCO by Pechan; and EGAS6.0. Growth factors were only available for emission projections to 2018. Emissions for 2020 were estimated using linear interpolation from 2018. For Electric Generating Unit (EGU) point sources, projections were performed on a facility by facility basis. The growth in generation emissions considers corporate utility growth in electricity demand and the potential dispatch by the regional Midwest Independent Transmission System Operator to meet broader demand. The growth in electricity consumption by load type is based on growth rate projections by the Wisconsin Public Service Commission and historic growth rates. Nonroad mobile emissions, excluding MAR, were calculated using NMIM with the modifications and additions to the input data described in section VI.A.3.b., above. Onroad mobile source emissions were calculated using the MOBILE6.2 emissions model. Emissions data are shown in Tables 7 through 11, below.

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Table 7. VOC and NO_X Emissions for Interim Year 2012 (tpd)

Area	VOC					NOx				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.16	1.52	0.78	7.53	9.99	0.002	0.20	1.55	5.49	7.242
Manitowoc	1.64	4.41	1.76	2.59	10.40	3.69	0.44	3.76	3.16	11.05
Sheboygan	2.88	7.02	2.01	4.12	16.03	15.07	1.07	4.15	2.92	23.21
Milwaukee-Racine	16.34	98.00	22.66	40.60	177.60	57.48	13.52	47.27	37.16	155.43

Table 8. VOC and NO_X Emissions for Maintenance Year 2020 (tpd)

Area	VOC					NOx				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.15	1.59	0.53	6.36	8.63	0.002	0.20	0.74	5.24	6.182
Manitowoc	2.08	4.62	1.25	2.27	10.22	3.74	0.46	1.86	2.61	8.67
Sheboygan	3.71	7.20	1.32	3.51	15.74	10.52	1.12	1.79	2.03	15.46
Milwaukee-Racine	20.20	101.41	14.91	38.99	175.51	50.98	13.89	20.41	30.06	115.34

Table 9. Comparison of 2007, 2012 and 2020 VOC and NO_X Emissions for Manitowoc County (tpd)

	VOC					NOx				
	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)
Point	1.43	1.64	2.08	0.21	0.65	3.13	3.69	3.74	0.56	0.61
Area	4.39	4.41	4.62	0.02	0.23	0.43	0.44	0.46	0.01	0.03
Onroad	2.24	1.76	1.25	-0.48	-0.99	5.38	3.76	1.86	-1.62	-3.52
Nonroad	3.15	2.59	2.27	-0.56	-0.88	3.61	3.16	2.61	-0.45	-1.00
Total	11.21	10.40	10.22	-0.81	-0.99	12.55	11.05	8.67	-1.50	-3.88

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Table 10. Comparison of 2007, 2012 and 2020 VOC and NO_X Emissions for Door County (tpd)

	VOC					NOx				
	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)
Point	0.30	0.16	0.15	-0.14	-0.15	0.002	0.002	0.002	0.00	0.00
Area	1.51	1.52	1.59	0.01	0.08	0.20	0.20	0.20	0.00	0.00
Onroad	0.93	0.78	0.53	-0.15	-0.40	1.97	1.55	0.74	-0.42	-1.23
Nonroad	8.85	7.53	6.36	-1.32	-2.49	5.28	5.49	5.24	0.21	-0.04
Total	11.59	9.99	8.63	-1.60	-2.96	7.452	7.242	6.182	-0.21	-1.27

Table 11. Comparison of 2007, 2012 and 2020 VOC and NO_X Emissions for Upwind Sheboygan and Milwaukee-Racine Areas (tpd)

	VOC					NOx				
	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)	2007	2012	2020	Net Change (2007-2012)	Net Change (2007-2020)
Point	14.46	19.22	23.91	4.76	9.45	54.68	72.55	61.50	17.87	6.82
Area	105.63	105.02	108.61	-0.61	2.98	14.34	14.59	15.01	0.25	0.67
Onroad	33.89	24.67	16.23	-9.22	-17.66	79.02	51.42	22.20	-27.60	-56.82
Nonroad	53.47	44.72	42.50	-8.75	-10.97	49.39	40.08	32.09	-9.31	-17.30
Total	207.45	193.63	191.25	-13.82	-16.20	197.43	178.64	130.80	-18.79	-66.63

The emission projections show that Wisconsin does not expect emissions in the Manitowoc County and Door County areas to exceed the level of the 2007 attainment year inventory during the maintenance period, even without implementation of CAIR. (*See also* discussion below.) As shown in Table 9, VOC and NO_X emissions in the Manitowoc County area are projected to decrease by 0.99 tpd and 3.88 tpd, respectively, between 2007 and 2020. As shown in Table 10, VOC and NO_X emissions in the Door County area are projected to decrease by 2.96 tpd and 1.27 tpd, respectively, between 2007 and 2020. In addition, as shown in Table 11, VOC and NO_X emissions in the upwind areas of Sheboygan and Milwaukee-Racine are projected to decrease by 16.20 tpd and 66.63 tpd, respectively, between 2007 and 2020.

In addition, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's "Regional Air Quality Analyses for Ozone, PM2.5, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008." LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO_X emissions without implementation of CAIR, LADCO projected 2007 EGU NO_X emissions for all States in the modeling domain based on Energy Information Administration growth rates by State (North American Electric Reliability Corporation (NERC) region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri and Wisconsin; 13.5% for Indiana, Kentucky, Michigan and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable controls, *e.g.,* consent decree or rule. EGU NO_X emissions projections for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 12. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO_X projections indicate that, due to the NO_X SIP Call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO_X is not expected to increase in Wisconsin, or any of the States in the immediate region, and overall NO_X emissions in Wisconsin, and the nearby region are expected to decrease substantially between 2005 and 2020.[2] Total NO_X emissions projections are shown in Table 13, below.

[2] There is more uncertainty about the use of SO_2 allowances and future projections for SO_2 emissions; thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future $PM_{2.5}$ SIP approvals and redesignation requests.

TABLE 12—EGU NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 13—TOTAL NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO_X	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Wisconsin used to demonstrate monitored attainment of the 8-hour NAAQS, Table 12 shows that EGU NO_X emissions will remain below attainment levels through 2018. If the rate of emissions increase between 2012 and 2018 continues through 2020, EGU NO_X emissions would still remain below attainment levels in 2020. Furthermore, as shown in Table 13, total NO_X emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO supports the conclusion that the Manitowoc County and Door County areas will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the Manitowoc County area for 2009, 2012 and 2018 are 0.081 ppm, 0.079 ppm, and 0.073 ppm, respectively. Peak modeled ozone levels in the Door County area for 2009, 2012 and 2018 are 0.084 ppm, 0.081 ppm, and 0.076 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; *e.g.,* consent decrees, rules, the NO_X SIP Call, Federal motor vehicle control programs, *etc.* Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2020 modeling run would also show levels well below the 1997 8-hour ozone standard.

EPA has considered the relationship of the maintenance plans to the reductions required pursuant to CAIR. This rule was remanded to EPA, and the process of developing a replacement rule is ongoing. However, the remand of CAIR does not alter the requirements of the NO_X SIP Call, and Wisconsin has demonstrated maintenance without any additional CAIR requirements (beyond those required by the NO_X SIP Call). Therefore, EPA believes that Wisconsin's demonstration of maintenance under sections 175A and 107(d)(3)(E) is valid.

The NO_X SIP Call requires States to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which States could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism, the CAIR ozone season trading program, which States could use to meet their SIP Call obligations (70 FR 25289–25290). EPA notes that a number of States, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR, including the ozone season NO_X trading program, remain in place during the remand, EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all States, regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standard.

All NO_X SIP Call States have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP Call requirements can be relied upon in demonstrating maintenance.

d. Monitoring Network

Wisconsin currently operates one ozone monitor in Manitowoc County and one ozone monitor in Door County. Wisconsin has committed to continue to operate and maintain an approved ozone monitoring network in the Manitowoc County and Door County areas. WDNR has also committed to consult with EPA regarding any changes in siting that may become necessary in the future. Wisconsin remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Manitowoc County and Door County areas depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Wisconsin's plan for verifying continued attainment of the 8-hour standard in the Manitowoc County and Door County areas consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. WDNR will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002), and will evaluate future VOC and NO_X emissions inventories for increases over the 2007 emission inventory levels.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after

redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted contingency plans for the Manitowoc County and Door County areas to address possible future ozone air quality problems. A contingency plan response will be triggered whenever a three-year average fourth-high monitored value of 0.085 ppm or greater is monitored within the maintenance area. When a response is triggered, WDNR will evaluate existing but not fully implemented, on-the way, and, if necessary, new control measures to correct the violation of the standard within 18 months. The State has confirmed EPA's interpretation that this commitment means that the measure will be adopted and implemented within 18 months of the triggering event. In addition, it is EPA's understanding that to acceptably address a violation of the standard, existing and on-the way control measures must be in excess of emissions reductions included in the projected maintenance inventories.

WDNR included the following list of potential contingency measures in its maintenance plans:

i. Broaden the application of the NO_X RACT program by including a larger geographic area, and/or including sources with potential emissions of 50 tons per year, and/or increasing the cost-effectiveness thresholds utilized as a basis for Wisconsin's NO_X RACT Program;

ii. Develop an anti-idling control program for mobile sources targeting diesel vehicles;

iii. Adopt a rule reducing VOC content in architectural, industrial and maintenance coatings; and

iv. Adopt a rule reducing VOC content in commercial and consumer products.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, WDNR commits to submit to the EPA updated ozone maintenance plans eight years after redesignation of the Manitowoc County and Door County areas to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Wisconsin has committed to retain the VOC and NO_X control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plans adequately address the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA proposes to find that the maintenance plan SIP revisions submitted by Wisconsin for the Manitowoc County and Door County areas meet the requirements of section 175A of the CAA.

B. Adequacy of Wisconsin's MVEBs

1. How are MVEBs developed and what are the MVEBs for the Manitowoc County and Door County areas?

Under the CAA, States are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from onroad transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively approve or find that the MVEBs are "adequate" for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plans submitted by Wisconsin for the Manitowoc County and Door County areas contain new VOC and NO_X MVEBs for the areas for the years 2012 and 2020. The availability of the SIP submission with these 2012 and 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on February 24, 2010, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2012 and 2020 MVEBs for the Manitowoc County and Door County areas closed on March 26, 2010. No adverse comments on the submittal were received during the adequacy comment period.

EPA, through this rulemaking, has found adequate and is proposing to approve the MVEBs for use to determine transportation conformity in the Manitowoc County and Door County areas, because EPA has determined that the areas can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. WDNR has determined the 2012 MVEBs for the Manitowoc County and Door County areas to be 1.76 tpd for VOC and 3.76 tpd for NO_X, and 0.78 tpd for VOC

and 1.55 tpd for NO_X, respectively. WDNR has determined the 2020 MVEBs for the Manitowoc County and Door County areas to be 1.25 tpd for VOC and 1.86 tpd for NO_X, and 0.53 tpd for VOC and 0.74 tpd for NO_X, respectively. These MVEBs are consistent with the onroad mobile source VOC and NO_X emissions projected by the Wisconsin Department of Transportation for 2012 and 2020, as summarized in Tables 9 and 10 above. Wisconsin has demonstrated that the Manitowoc County area can maintain the 8-hour ozone NAAQS with mobile source emissions of 1.76 tpd and 1.25 tpd of VOC and 3.76 tpd and 1.86 tpd of NO_X in 2012 and 2020, respectively, since emissions will remain under attainment year emission levels. Wisconsin has demonstrated that the Door County area can maintain the 8-hour ozone NAAQS with mobile source emissions of 0.78 tpd and 0.53 tpd of VOC and 1.55 tpd and 0.74 tpd of NO_X in 2012 and 2020, respectively, since emissions will remain under attainment year emission levels.

C. 2005 Base Year Emissions Inventories

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. On June 12, 2007, WDNR submitted a 2005 base year emissions inventory to meet this requirement. Emissions contained in the submittal cover the general source categories of point sources, area sources, on-road mobile sources, and non-road mobile sources. All emission summaries were accompanied by descriptions of emission calculation procedures and sources of input data.

Point source sector emissions inventories were developed using reported point source emissions, EPA's Clean Air Markets database and approved EPA techniques for emissions calculations. Emissions were estimated by collecting process-level information from each facility that qualifies for inclusion into WDNR's point source database. Process, boiler, fugitive and tank emissions were typically calculated using throughput information multiplied by an emission factor for the process. Emission factor sources included mass balance, stack testing, continuous emissions monitors, engineering judgment and EPA's Factor Information Retrieval database.

Area source emissions were calculated using population, gasoline consumption, employment, crop acreages, and other activity surrogates. The results of an EPA Solvent Mass Balance study were used to estimate emissions for some categories. Emission factors were derived from local data, local or national surveys and EPA guidance for the development of emissions inventories. Point source emissions were subtracted from total category specific area source emissions to prevent double counting.

Nonroad mobile source emissions were calculated using EPA's NMIM and emissions estimates developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM. Before NMIM was run, the following modifications and additions were made to the NMIM input data: (1) Revised activity data for construction equipment using updates provided by Pechan; (2) revised allocation data for recreational marine equipment using updates provided by ENVIRON International Corporation (ENVIRON); (3) added emission factors for diesel tampers/rammers provided by Pechan; (4) revised population data for construction and recreational marine equipment using updates provided by Pechan and ENVIRON, respectively; (5) revised growth rates using updates provided by Pechan; and (6) revised gasoline parameters, including Reid Vapor Pressure, oxygenate content and sulfur content, using updates provided by the States and Pechan. Onroad mobile source emissions were calculated using the MOBILE6.2 emissions model.

The 2005 summer day emissions of VOC and NO_X for the Manitowoc County and Door County areas are summarized in Table 14, below. EPA is proposing to approve these 2005 base year inventories as meeting the section 172(c)(3) emissions inventory requirement.

Table 14. VOC and NO_X Emissions for Base Year 2005(tpd).

Area	VOC					NOx				
	Point	Area	Onroad	Nonroad	Total	Point	Area	Onroad	Nonroad	Total
Door	0.251	1.910	1.046	9.305	12.512	0.003	0.259	2.453	5.348	8.063
Manitowoc	1.796	5.827	2.575	3.380	13.578	5.073	0.526	7.355	3.814	16.768

VII. What actions is EPA taking?

EPA is proposing to determine that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone NAAQS. EPA is proposing to approve the redesignations of the Manitowoc County and Door County areas from nonattainment to attainment for the 1997 8-hour ozone NAAQS. After evaluating the redesignation requests submitted by Wisconsin, EPA believes that the requests meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. The final approval of these redesignation requests would change the official designations for the Manitowoc County and Door County areas from nonattainment to attainment for the 1997 8-hour ozone standard. EPA is also proposing to approve the maintenance plan SIP revisions for the Manitowoc County and Door County areas. EPA's proposed approvals of the maintenance plans is based on the State's demonstration that the plans meet the requirements of section 175A of the CAA, as described more fully above. EPA is proposing to approve WDNR's 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA finds adequate and is proposing to approve Wisconsin's 2012 and 2020 MVEBs for the Manitowoc County and Door County areas.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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, these actions merely do not impose additional requirements beyond those imposed by State law and the Clean Air Act. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are 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);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: April 14, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–9753 Filed 4–26–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2010-0006]
[MO 92210-0-0008 B2]

Endangered and Threatened Wildlife and Plants; 90–day Finding on a Petition to List the Mohave Ground Squirrel as Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list the Mohave ground squirrel (*Xerospermophilus mohavensis*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the Mohave ground squirrel may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12–month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act. We will make a determination on critical habitat for this species, which was also requested in the petition, if and when we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before June 28, 2010. After this date, you must submit information directly to the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the date noted above.

ADDRESSES: You may submit information by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for docket FWS-R8-ES-2010-0006 and then follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2010-0006; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Michael McCrary, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, 2593 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644-1766; facsimile (805) 644-3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Mohave ground squirrel from government agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Historical and current survey information on the Mohave ground squirrel, including survey methods and design, time of year, weather information, time of day, site selection method, and descriptions of physical characteristics of landscapes, soil, and vegetation.

(3) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(4) Information on management programs for the conservation of the Mohave ground squirrel.

(5) Information on current or expected future development within the range of the Mohave ground squirrel, including but not limited to: the extent or magnitude of habitat loss, degradation, or fragmentation from development for energy, transportation, agriculture, military training; land management prescriptions; or recreation, and how they may affect the conservation of the Mohave ground squirrel.

(6) Information on the population status of predators of the Mohave ground squirrel, including information on the occurrence and extent/severity of predation by coyotes, house cats, common ravens, domestic dogs, and feral dogs on the Mohave ground squirrel, and the effect of this predation on the Mohave ground squirrel's long-term survival.

(7) Information on morphological, behavioral, genetic, or ecological variability in the Mohave ground squirrel, and any change in that variability.

(8) Information on environmental change within the range of the Mohave ground squirrel.

(9) Information on the importance of certain areas or populations to the long-term conservation of the Mohave ground squirrel that may help us identify potentially significant portions of the species' range. This may include information that demonstrates the following factors are important to a portion of the Mohave ground squirrel's range:

(a) The quality, quantity, and distribution of habitat relative to the biological requirements of the species;

(b) The historical values of the habitat to the species;

(c) The frequency of use of the habitat; and

(d) The uniqueness or importance of the habitat for other reasons, such as breeding, feeding, seasonal movements, wintering, or suitability for population expansion, or for genetic diversity.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing the Mohave ground squirrel is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), in accordance with section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the Mohave ground squirrel, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species";

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection, including managing for the potential effects of climate change.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential for the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the definition of critical habitat in section 3 of the Act and the requirements of section 4 of the Act.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public view. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a review of the status of the species, which is subsequently summarized in our 12–month finding.

Petition History

On September 5, 2005, we received a petition, dated August 30, 2005, from Defenders of Wildlife and Dr. Glenn R. Stewart to list the Mohave ground squirrel as endangered, and to designate critical habitat concurrently with the listing. The petition identified the scientific name for Mohave ground squirrel as S*permophilus mohavensis*; however, the name was changed in 2009 to *Xerospermophilus mohavensis* (Helgen *et al.* 2009, p. 273), and we refer to it in this petition finding by its current name. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50

CFR 424.14(a). The petition contained detailed information on the natural history and biology of the Mohave ground squirrel, and the current status and distribution of the species. It also contained information on what the petitioners reported as potential threats to the species. In a March 28, 2006, letter to the petitioners, we informed them that we would not be able to address their petition at that time because further action on the petition was precluded by court orders and settlement agreements for other listing actions that required us to use nearly all of our listing funds for fiscal year 2006. We also stated our initial review of the petition did not indicate that an emergency situation existed and that emergency listing was not necessary.

Previous Federal Actions

On December 13, 1993, the Service received a petition dated December 6, 1993, from Dr. Glenn R. Stewart of California Polytechnic State University, Pomona, California, requesting the Service to list the Mohave ground squirrel as a threatened species. At that time, the species was a category 2 candidate (November 15, 1994; 59 FR 58988), and was first included in this category on September 18, 1985. Category 2 included taxa for which information in the Service's possession indicated that listing the species as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed listing rule. On September 7, 1995, we published our 90–day petition finding, which determined that the 1993 petition did not present substantial information indicating that the petitioned action may be warranted (60 FR 46569).

Species Information

The Mohave ground squirrel (*Xerospermophilus mohavensis*) is a distinct, full species with no recognized subspecies. The petitioners presented sufficient, reliable information related to the taxonomic status of the Mohave ground squirrel. It was discovered in 1886 by F. Stephens and described as a distinct monotypic species by Merriam (1889, p. 15). The type locality is near Rabbit Springs in the Lucerne Valley, San Bernardino County, California.

The Mohave ground squirrel is a medium-sized squirrel. Total length is approximately 23 centimeters (cm) (9 inches (in)) with a tail length of 6.4 cm (2.5 in). The upper body is grayish brown, pinkish gray, cinnamon gray, and pinkish cinnamon without stripes or flecking. The underparts of the body and the tail are white (Ingles 1965, p. 171). The skin is darkly pigmented and dorsal hair tips are multi-banded.

The closest relative of the Mohave ground squirrel is the round-tailed ground squirrel (*Xerospermophilus tereticaudus*). It has a contiguous, but not overlapping, geographic range with the Mohave ground squirrel.

Mating and Reproduction

The Mohave ground squirrel mating season occurs from mid-February to mid-March (Harris and Leitner 2004, p. 1). Recht (c.f. Gustafson 1993, p. 83) reported that male Mohave ground squirrels are territorial during the mating season. Females may enter male Mohave ground squirrel territory and remain for 1 or 2 days. After copulation, the females establish their own home ranges. John Harris (personal communication, Mills College, Oakland, CA, as cited in the petition, p. 14) observed male Mohave ground squirrels staking out the overwintering sites of females to mate with them when they emerged.

Gestation is about 30 days with litter size ranging from four to nine (Best 1995, p. 3). Parental care continues through mid-May, with juvenile Mohave ground squirrels emerging above ground between 10 days to 2 weeks later (Gustafson 1993, p. 84). Mortality for juveniles is high during the first year with more male Mohave ground squirrels lost than females. Female Mohave ground squirrels can breed at 1 year of age if environmental conditions are favorable (Leitner and Leitner 1998, p. 28).

The reproductive success of the Mohave ground squirrel is dependent on the amount of fall and winter precipitation. Leitner and Leitner (1998, p. 20) found a positive correlation between fall and winter rainfall and recruitment of juvenile squirrels the following year. In a low rainfall year, Mohave ground squirrels may forego breeding, or the low availability of food due to low rainfall may cause reproductive failure (Leitner and Leitner 1998, p. 29).

Range and Distribution

The presumed historical range of the Mohave ground squirrel, which is based on the current range and historical locations of suitable habitat, is the northwest portion of the Mojave Desert in parts of Inyo, Kern, Los Angeles, and San Bernardino Counties, California. This area is bounded on the south and west by the San Gabriel, Tehachapi, and Sierra Nevada ranges, and on the northeast by the Owens Lake and Coso, Slate, Quail, Granite, and Avawatz Mountains. The southeastern edge of the historical range is bordered by the Mojave River with the exception of one locality east of the Mojave River in the Lucerne Valley. The historical range of the Mohave ground squirrel is assumed to have included that area of the Antelope Valley west of the communities of Palmdale, Lancaster, Rosamond, and Mojave, although there are no records of the species being sighted or captured there.

The current range of the Mohave ground squirrel is similar to the historical range, except it excludes the western portion of the Antelope Valley in Los Angeles and Kern Counties and possibly some of the area from Victorville to the south and southeast to Lucerne Valley in San Bernardino County. Urban and agricultural development in these areas has resulted in the loss or modification of Mohave ground squirrel habitat. The Mohave ground squirrel has the smallest range of any ground squirrel species in the United States. Gustafson (1993, p. 8) states the geographic range of the Mohave ground squirrel encompasses approximately 1,968,000 hectares (ha) (4,863,000 acres (ac)).

Activity Patterns, Movements, and Home Range

The active season for the Mohave ground squirrel is short, generally from early March to August (Bartholomew and Hudson 1960, p. 194), but may begin as early as mid-January to late February. Initiation depends on temperature and elevation (Gustafson 1993, p. 19). During this time, Mohave ground squirrels must mate, gather enough nutrition to produce and sustain a litter, and ensure nutritional reserves to last during the inactive season. During the inactive season, Mohave ground squirrels exist in their burrows in a state of torpor (a state of reduced physiological activity or sluggishness) to conserve their reserves of energy and water.

The length of the active season varies by sex, age, and availability of food resources. In dry years, which are often non-reproductive years, Mohave ground squirrels may enter their state of torpor as early as spring (Leitner *et al.* 1995, p. 83). The active season for an adult is shorter than for a juvenile as adults do not need to acquire as much energy for the inactive season as juveniles do. The active season for an adult female is generally longer than for a male because females need to acquire additional energy for litter production and lactation (Leitner *et al.* 1997, pp. 114-115).

Mohave ground squirrels are diurnal; they spend much of the day above ground (Recht 1977, p. 56). As temperatures increase into the spring and early summer, Mohave ground squirrels will spend more time in the shade of shrubs or briefly use their burrows. Burrows are usually located beneath large shrubs. Mohave ground squirrels may use several burrows at night throughout a season; they also use other burrows for predator avoidance and temperature regulation. The burrow used for the inactive season is dug specifically for that period (Recht 1977, p. 9).

Mohave ground squirrels exhibit a behavior called natal dispersal. Upon dispersing from the burrow where they were born, some males will move and take up residence at least 1,009 meters (m) (3,280 feet (ft)) from the natal burrow while females move a shorter distance of 200 to 300 m (650 to 980 ft) from their natal burrows (Leitner and Leitner 1998, p. 34; Harris and Leitner 2005, p. 191).

The home range of the Mohave ground squirrel varies among years and between sexes during the mating season. The mean home range is 0.74 ha (1.83 ac) for mating females and 6.73 ha (16.63 ac) for males. Outside the breeding season, the mean home range size is 1.20 ha (2.96 ac) for females and 1.24 ha (3.06 ac) for males (Harris and Leitner 2004, pp. 520-521).

Population Demographics

The behavioral characteristics of the Mohave ground squirrel, as discussed above, make it difficult to determine or estimate population status and trends because the species spends much of the year underground and populations appear to be sensitive to both seasonal and annual rainfall patterns. That is, in dry years or dry fall seasons, reproduction during the following spring season may be unsuccessful and population size may contract (Leitner and Leitner 1998, pp. 29-31).

Survey results suggest that the Mohave ground squirrel has a patchy distribution throughout its range (Hoyt 1972, p. 7; Gustafson 1993, p. viii). Most reported information describes the number of animals trapped or number trapped as compared to the trapping effort. We are aware of only one location where information on population trend was available (Leitner 2005, p. 3). In the northwest portion of the range of the Mohave ground squirrel, trapping results are available for the Coso Range within China Lake Naval Air Weapons Station (NAWS). The surveys span 1992 to 1996 and 2001 to 2005. The total number of Mohave ground squirrels captured during the first survey period was more than twice that of the second (Leitner 2005, p. 3).

Brooks and Matchett (2002) analyzed the data from all known Mohave ground squirrel studies. Forty-nine percent of the sites were identified from observing or trapping only one animal.

Habitat and Life History Requirements

The habitat requirements of the Mohave ground squirrel are varied. The species has been found in a variety of vegetative communities including Mojave Creosote Scrub, Desert Saltbush Scrub, Desert Sink Scrub, Desert Greasewood Scrub, Shadscale Scrub, and Joshua Tree (*Yucca brevifolia*) Woodland (Gustafson 1993, pp. ix, 81). Creosote Bush Scrub is the vegetation community in which the Mohave ground squirrel is most often found. Mohave ground squirrels usually inhabit flat to moderately sloping terrain. They prefer deep rather than shallow soils and gravelly soils rather than sandy soils (Aardahl and Roush 1985, p. 23). Soil characteristics are important as the Mohave ground squirrel constructs burrows for temperature regulation, predator avoidance, and inactive season use.

The food habits of the Mohave ground squirrel are diverse. Recht (1977, p. 80) called the Mohave ground squirrel a facultative specialist; its foraging strategy falls between that of a specialist and a generalist. The Mohave ground squirrel specializes in foraging on certain plant species over short periods of time. As the availability of forage species changes throughout the active season, the Mohave ground squirrel adapts its foraging strategy to maximize energy intake in a changing environment. Observations and fecal analysis indicate that Mohave ground squirrels consume a variety of annual and perennial plants and arthropods (Leitner and Leitner 1992, p. 12; Gustafson 1993, pp. 77-83). At one study site, the leaves of three shrub species made up 60 percent of the Mohave ground squirrel diet based on fecal analysis (Leitner and Leitner 1998, p. 34). In a study by Leitner and Leitner (1992) in the northern part of its range, the Mohave ground squirrel was found to consume leaves of annual and perennial plants, their fruits and seeds, fungi, and butterfly larvae. Mohave ground squirrels appear to exploit food sources that are available on an intermittent basis. They may also select particular food items over others because of higher water content. Leitner and Leitner (1992, p. 25) concluded that the Mohave ground squirrel is flexible in exploiting high-quality food resources.

Predation and Mortality

There is little documentation on the natural predators of the Mohave ground squirrel. There is circumstantial evidence of predation by coyotes (*Canis latrans*), prairie falcons (*Falco mexicanus*), and common ravens (*Corvus corax*) (Leitner *et al.* 1997, p. 49; J. Harris, personal communication, as cited in the petition, p. 15). There may be other natural predators of the Mohave ground squirrel.

Mortality is high for the Mohave ground squirrel during the first year and appears to be skewed toward males (Brylski *et al.* 1994, p. 64; Leitner and Leitner 1998, p. 28). Mortality may also be caused by extended periods of low amounts of fall and winter rainfall, which results in reduced availability of forage and water, and can increase vulnerability to disease.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR 424, set forth the procedures for adding species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information on threats to the Mohave ground squirrel, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioners presented information regarding threats to the Mohave ground squirrel from reduced range and habitat destruction, including: urban and rural

development on private and public lands; agricultural development; military activities; livestock grazing; transportation; energy development; and that the cumulative impacts of drought, habitat destruction, habitat fragmentation, and decrease in precipitation with climate change pose a threat greater than the drought episodes to which the Mohave ground squirrel is adapted.

The range of the Mohave ground squirrel is the smallest of all ground squirrels in the United States. Based on information provided by the petitioners, the Mohave ground squirrel appears to have been nearly extirpated from the southern portion of its range, which represents approximately 20 percent of its range (Leitner as cited in the petition, p. 8). This assertion is based on the results of surveys conducted for the Mohave ground squirrel from 2002 to 2004 (Leitner 2004 as cited in the petition, p. 17). The portion of the recently reduced range includes an area south of State Highway 58 in the Palmdale-Lancaster area and the Victorville to Lucerne Valley area.

Private Lands

On private lands, which comprise about 31 percent of the current range of the Mohave ground squirrel, the petitioners claim 2.8 percent of the range of the Mohave ground squirrel has been lost to urban and rural development and approximately 2 percent (37,000 ha (92,000 ac)) to agricultural fields. The information on impacts to the Mohave ground squirrel from agricultural development was derived from Hoyt (1972, p. 8), Aardahl and Roush (1985, p. 2), and Gustafson (1993, pp. 23-24). The petitioners also stated that they have no updated data to quantify the extent or intensity of this threat. We have no information in our files to dispute the figures presented by the petitioners; however, we currently do not have information to determine whether a 2.8 percent loss to urban and rural development and a 2 percent loss to agricultural development is biologically significant to the Mohave ground squirrel.

Public Lands

Public lands managed by the Bureau of Land Management (BLM) account for about 31.8 percent of the species' range. The petitioners stated that BLM's land management plan for the West Mojave Desert (West Mojave Plan) would allow new development throughout much of the range of the Mohave ground squirrel and would not protect the four Mohave ground squirrel "core areas" (see petition, p. 17). "Core areas" are defined by the petitioners as locations where Mohave ground squirrels have been reliably captured over time, or where there are thriving populations. The petitioners stated that activities that result in the loss of habitat in these "core areas" or prevent dispersal among these "core areas" will impede and eventually prohibit conservation of the Mohave ground squirrel.

Public land managed by the Department of Defense accounts for about 34.5 percent of the species' current range. The petitioners stated that current military training at Fort Irwin threatens Mohave ground squirrels by crushing animals, compacting and otherwise disturbing soils, collapsing burrows, destroying shrubs used for cover, and reducing spring annual plants used by Mohave ground squirrels for forage (Bury *et al.* 1977, pp. 16, 18). According to the petitioners, Fort Irwin's training currently affects 7.4 percent of the range of the Mohave ground squirrel, and the proposed expansion of Fort Irwin will affect additional lands within the range of the Mohave ground squirrel and will fragment one of the four Mohave ground squirrel "core areas" as identified by the petitioners.

Additionally, 2.7 percent of the current range of the Mohave ground squirrel occurs on other public 'protected lands' (see petition, p. 40) including; federally designated wilderness areas, State park land, California Department of Fish and Game land, and the Desert Tortoise Natural Area.

Livestock Grazing

The petitioners stated that livestock grazing has the potential to degrade Mohave ground squirrel habitat through changes in soil structure, including accelerated erosion and collapsing burrows, changes in vegetative structure, reduced availability of native forage species (Laabs 2002, p. 5; Campbell 1988, pp. 569, 574), and direct competition with Mohave ground squirrels for limited quality and quantity of forage (Leitner and Leitner 1998; pp. 29, A6, A7, A15, and A23). According to the petitioners' GIS analysis, 27 percent of the range of the Mohave ground squirrel has been impacted by livestock grazing.

Aardahl and Roush (1985, p. 23), as cited in the petition, stated that "land uses which affect the availability of forbs and grasses have the potential to influence the long-term population of the Mohave ground squirrel," but this does not "mean that properly managed livestock grazing will cause a significant negative impact on the Mohave ground squirrel." Twenty-one of 22 study sites surveyed were grazed by sheep or cattle in varying degrees; the study site with the highest total adjusted captures of Mohave ground squirrels showed considerable signs of grazing (Aardahl and Roush 1985, p. 23). The petitioners did not provide information, and we have no information in our files, on the extent or magnitude of the impacts of livestock grazing on the Mohave ground squirrel.

Transportation

The petitioners identified the extensive network of highways and roads in the range of the Mohave ground squirrel as a threat. The petitioners claim impacts from highway and road establishment and vehicle use include habitat loss, fragmentation, and degradation, and direct mortality from vehicle strikes (Gustafson 1993, pp. 23, 26; BLM 2003, p. 30; Leitner as cited in the petition, p. 22). The petitioners stated that there is evidence of surface disturbance to roadsides up to 400 m (1,312 ft) away from the road, and that 37 percent of transects conducted by the BLM in the West Mojave Desert were bisected by roads. The petitioners calculated that the total area of the network of roads and highways affected 65,964 ha (163,000 ac) or 3.3 percent of the range of the Mohave ground squirrel. The petitioners provided additional information that impacts from roads on the desert tortoise have been documented more than 3,962 m (13,000 ft) from the highest level traffic road (Hoff and Marlow 2002, p. 454) and that similar impacts likely occur to the Mohave ground squirrel.

We do not agree that impacts to the desert tortoise from roads that have been measured more than 3,962 m (13,000 ft) from the highest traffic roads are the same as those to the Mohave ground squirrel. The Hoff and Marlow study (2002, p. 454) reported on the abundance of desert tortoise sign at intervals from roads. This study was specific to the desert tortoise. It did not examine the effects of roads on the Mohave ground squirrel. Therefore, any application of the results from this research to the Mohave ground squirrel is inferred and is not supported by the data. However, we agree with the petitioners that roads and highways result in direct mortality to Mohave grounds squirrels from vehicle collisions and habitat loss and degradation.

Energy Development

According to the petitioners, geothermal exploration and development and the construction of

solar energy plants in the range of the Mohave ground squirrel have caused, and will likely cause, adverse impacts to the Mohave ground squirrel and loss or degradation of habitat (Leitner and Leitner 1989, p. 2). The petitioners did not quantify the amount of habitat affected. We acknowledge that energy development for geothermal and solar energy has occurred within the range of the Mohave ground squirrel and that this development can result in the degradation or loss of habitat used by the Mohave ground squirrel. The petitioners do not provide information, and we do not have information in our files, on the extent of this loss or degradation and how it will affect the conservation of the Mohave ground squirrel.

Cumulative Impacts of Habitat Destruction, Fragmentation, and Decreased Precipitation

The petitioners provided information that indicates the reproduction and survival of the Mohave ground squirrel is ultimately linked to rainfall (Harris and Leitner 2004, pp. 517, 518). Mohave ground squirrels may fail to persist in certain areas during drought episodes (Leitner and Leitner 1998, p. 31). The petitioners assert the cumulative impacts of habitat destruction, habitat fragmentation, and overall decrease in precipitation due to climate change are a greater threat to the Mohave ground squirrel than the periods of low rainfall and drought episodes with which the Mohave ground squirrel evolved.

Based on information from the Intergovernmental Panel on Climate Change (Watson *et al.* 2002, pp. 8, 9), we acknowledge temperatures in southern California are likely to increase and precipitation is likely to decrease in the future. With hotter, drier conditions and more extreme weather patterns in southern California than those with which the Mohave ground squirrel evolved, the species may be negatively affected. However, we believe that climate change models that are currently available are not yet capable of making meaningful predictions of climate change for specific, local areas such as the range of the Mohave ground squirrel (Parmesan and Matthews 2005, p. 354). We are not currently aware of models that predict how climate in the range of the Mohave ground squirrel will change, and we do not know how any change may alter the range of, or otherwise threaten, the species.

Summary of Factor A

In summary, the petitioners presented information regarding threats to the Mohave ground squirrel from reduced range and habitat destruction, including: urban and rural development on private and public lands; agricultural development; military activities; livestock grazing; transportation; and energy development. We found the petition and information in our files presents substantial information that these activities may have contributed to a recent range contraction in the southern portion of the Mohave ground squirrel's range, and may threaten the Mohave ground squirrel across its current range by removing shrubs needed for cover and forage, disturbing soil, or removing or degrading other habitat features necessary for Mohave ground squirrel life history requirements. Additionally, one or more of these activities may threaten what the petitioners identify as "core areas" for the Mohave ground squirrel by removing habitat, fragmenting the habitat, and preventing dispersal among the "core areas." However, we determined the petition does not present substantial information indicating that climate change may be a threat to the species. Additionally, information on the subject of climate change in our files is not specific to the Mohave ground squirrel. We will evaluate the effects of climate change, including reduced precipitation and any cumulative effects of habitat fragmentation or loss on the Mohave ground squirrel, when we conduct our status review.

On the basis of our evaluation of the information in the petition and information in our files, we determined that the petition presents substantial information indicating that listing the Mohave ground squirrel as endangered may be warranted due to destruction, modification, or curtailment of the species' habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioners did not provide information or list any threats to the Mohave ground squirrel from overutilization for commercial, recreational, or educational purposes. The petitioners stated that the utilization of the Mohave ground squirrel for scientific purposes is strictly controlled by the California Department of Fish and Game.

Summary of Factor B

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Mohave ground squirrel as endangered may be warranted due to the overutilization for commercial, recreational, scientific, or educational purposes. Additionally, we do not have substantial information in our files to suggest that overutilization for commercial, recreational, scientific, or educational purposes may threaten the Mohave ground squirrel. However, we will evaluate all factors, including threats from overutilization for commercial, recreational, scientific, or educational purposes, when we conduct our status review.

C. Disease or Predation

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioners did not provide information or list any threat to the Mohave ground squirrel from disease, and we do not have information in our files regarding potential threats to this species due to disease.

The petitioners stated that there is little documentation of the Mohave ground squirrel's natural predators, but claimed that predation by coyotes, common ravens, house cats, domestic dogs, and feral dogs is a concern. Although the petitioners stated that cats prey on small mammals and dogs dig up rodent burrows, they did not present any information on the level of mortality or population impacts from predation for Mohave ground squirrels, any other ground squirrel species, or any small mammal species. The petitioners noted that the numbers of common ravens and coyotes, known predators of the Mohave ground squirrel, have increased, posing an increased predation risk to Mohave ground squirrel populations. However, there is no information provided that the numbers of cats, dogs, common ravens, or coyotes have increased in the range of the Mohave ground squirrel, and there is no evidence to indicate that there is increased predation by these predators on the Mohave ground squirrel. We do not have information in our files to indicate that predation is a threat to the survival of the Mohave ground squirrel.

Summary of Factor C

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Mohave ground squirrel as endangered may be warranted due to disease or predation. Additionally, we do not have substantial information in our files to suggest that disease or predation threaten the Mohave ground squirrel. However, we will evaluate all factors, including threats from disease and

predation, when we conduct our status review.

D. The Inadequacy of Existing Regulatory Mechanisms

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioners stated that current regulations have proven inadequate to conserve the Mohave ground squirrel; that only 9 percent of the range of the Mohave ground squirrel has any kind of protected status; and that, although the Mohave ground squirrel is a State-listed species, this listing provides no conservation assurances for the Mohave ground squirrel on Federal lands.

The California Endangered Species Act provides protection for the Mohave ground squirrel on private and State-owned land, and on Federal lands in relation to activities carried out by non-Federal entities that are required to obtain a State permit or authorization.

The major military installations within the range of the Mohave ground squirrel have implemented Integrated Natural Resources Management Plans that cover the Mohave ground squirrel and implement actions to manage for the species. In their management plan for the West Mojave Desert, the BLM considers the Mohave ground squirrel an umbrella species, a species whose habitat requirements include those of many other species and whose conservation should automatically conserve a host of other species. BLM has implemented a plan that establishes a Mohave ground squirrel Conservation Area that contains 35 percent of the species' historical range on BLM land.

Summary of Factor D

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Mohave ground squirrel as endangered may be warranted due to the inadequacy of existing regulatory mechanisms. Additionally, we do not have substantial information in our files to suggest that existing regulatory mechanisms are inadequate and thus threaten the Mohave ground squirrel. However, we will evaluate all factors, including threats from the inadequacy of existing regulatory mechanisms, when we conduct our status review.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioners stated that pesticide use may adversely affect the Mohave ground squirrel. According to the petitioners, Mohave ground squirrels live in native vegetative communities adjacent to agricultural fields and other areas where rodenticides are used. Mohave ground squirrels use these areas for forage and shelter. The petitioners claim that if rodenticides are used on agricultural fields, Mohave ground squirrels could be adversely affected, or they could be exterminated by the State Rodent Program. In the early part of the 20th century, the Los Angeles Agricultural Commission used poison grain to target and eliminate ground squirrels in the Antelope Valley, which includes the historical range of the Mohave ground squirrel.

Although we are aware that rodenticides, such as those that include strychnine as the active ingredient, may be used to kill ground squirrels, there is no information in the petition or our files to indicate that rodenticides are used to specifically target Mohave ground squirrels or that any rodenticides currently used within the range of the Mohave ground squirrel are adversely affecting the status of this species.

Summary of Factor E

On the basis of our evaluation, we determined that the petition does not present substantial information indicating that listing the Mohave ground squirrel as endangered may be warranted due to other natural or manmade factors affecting its continued existence. Additionally, we do not have substantial information in our files to suggest that other natural or manmade factors threaten the Mohave ground squirrel. However, we will evaluate all factors, including threats from other natural or manmade factors affecting its continued existence, when we conduct our status review.

Finding

The petition and supporting information have identified numerous factors affecting the Mohave ground squirrel, including: reduced range, urban and rural development, agricultural development, military activities, livestock grazing, transportation and energy development, and cumulative impacts of habitat destruction, fragmentation, and decreased precipitation (Factor A); predation (Factor C); the lack of regulatory mechanisms protecting the species and its habitat (Factor D); and pesticide use (Factor E).

On the basis of our evaluation under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the Mohave ground squirrel as endangered may be warranted. This finding is based on information provided by the petitioners and in our files for Factor A. In particular, there is substantial information to indicate habitat based threats under Factor A may remove shrubs needed for cover and forage, disturb soil, or remove or degrade other habitat features necessary for Mohave ground squirrel life history requirements across its current range. The information provided by the petitioners and in our files for Factors B, C, D, and E was not substantial. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

Because we have found that the petition presents substantial information that listing the Mohave ground squirrel may be warranted, we are initiating a status review to determine whether listing the Mohave ground squirrel under the Act is warranted. We will issue a 12–month finding as to whether the petitioned action is warranted.

The "substantial information" standard for a 90–day finding differs

from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

The petitioners also requested that we designate critical habitat for the Mohave ground squirrel. If we determine in our 12–month finding that listing the Mohave ground squirrel is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Author

The primary authors of this notice are staff members of the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 12, 2010

Signed: Daniel M. Ashe

Deputy Director, U.S. Fish and Wildlife Service

[FR Doc. 2010–9377 Filed 4–26–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0911201413–0182–01]

RIN 0648–AY38

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut; Recordkeeping and Reporting

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to amend the recordkeeping and reporting requirements for the Pacific halibut guided sport fishery in International Pacific Halibut Commission Regulatory Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). If approved, these regulations would revise federal requirements regarding the location and time period for submission of Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets and modify logbook recording requirements. This action is necessary because NMFS relies on the state logbook data for managing halibut and to improve consistency between federal and State of Alaska requirements for the submission of the logbook data sheets and the logbook reporting format. This action is intended to achieve the halibut fishery management goals of the North Pacific Fishery Management Council and to support the conservation and management provisions of the Northern Pacific Halibut Act of 1982.

DATES: Comments must be received no later than May 12, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–AY38, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Categorical Exclusion, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region website at *http://alaskafisheries.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this rule may be submitted to NMFS at the above address, e-mailed to *David__Rostker@omb.eop.gov* or faxed to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Gabrielle Aberle, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

The International Pacific Halibut Commission (IPHC) and National Marine Fisheries Service (NMFS) manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979).

Regulations developed by the IPHC are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The current IPHC annual management measures were published on March 19, 2009 (74 FR 11681). IPHC regulations affecting sport fishing for halibut and charter vessels in Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska) may be found in sections 3, 25, and 28 (74 FR 11681; March 19, 2009).

The Halibut Act also provides regulatory authority to the Secretary and the North Pacific Fishery Management Council (Council). The Secretary, under 16 U.S.C. 773c(a) and (b), has the general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary is directed to consult with the Secretary of the

department in which the U.S. Coast Guard is operating. Under 16 U.S.C. 773c(c), the Council may develop halibut fishery regulations, for its geographic area of concern, that apply to U.S. nationals or vessels. Such an action by the Council is limited to regulations that are in addition to, and not in conflict with, IPHC regulations. Council-developed regulations may be implemented by NMFS only after approval by the Secretary. Using its authority under the Halibut Act, the Council is developing a regulatory program to manage the guided sport charter vessel fishery for halibut. One step in the development of that program was the implementation of a one-halibut daily bag limit on charter vessel anglers in IPHC Area 2C in order to limit their overall harvest to approximately the established guideline harvest level (74 FR 21194; May 6, 2009).

The final regulations implementing the one-halibut daily bag limit program include recordkeeping and reporting measures codified at 50 CFR 300.65 that require the submission of Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook (charter logbook) data sheets for halibut charter vessels operating in IPHC Areas 2C and 3A (74 FR 21194; May 6, 2009). The proposed action would revise these recordkeeping and reporting measures to (1) improve consistency between federal regulations and State of Alaska (State) logbook instructions for the submission of the data sheets, and (2) address recent State changes to the charter logbook reporting format. This proposed action is administrative in nature, would revise the recordkeeping and reporting burden on guided charter operators in IPHC Areas 2C and 3A, would reduce potential confusion by the regulated public, and would facilitate efficient reporting of halibut caught and retained in these areas.

Halibut management in U.S. Convention waters, which include State and federal waters, is an international and federal responsibility under the Convention and the Halibut Act. To manage halibut effectively, international and federal managers need information on halibut fishing effort and harvest by the guided sport charter sector of the fishery. To avoid duplicative surveys of, and reporting by, industry, NMFS depends on data gathered by the State through its ongoing surveys of sport charter fishermen. This information has been used by the IPHC to set annual catch limits, and by the Council and NMFS to evaluate the potential effects of alternative restrictions on Area 2C guided sport harvests, charter vessel limited entry in Areas 2C and 3A, and a catch sharing plan. This information includes data gathered from the ADF&G charter vessel logbook program.

The ADF&G Division of Sport Fish initiated the mandatory charter vessel logbook program in 1998. The logbook program is based on Alaska Board of Fisheries regulations requiring logbook reporting and annual registration of sport fishing guides and businesses. The logbook program was developed to collect information on actual participation and harvest by individual charter vessels and businesses in various regions of the State.

Under the logbook program, ADF&G charter logbooks are issued to licensed sport fishing businesses. Each logbook contains pages on which to record data, along with detailed instructions, including an example of a completed logbook page. The pages are perforated to allow a copy of each page to be detached from the logbook and submitted to the ADF&G. Each data sheet is pre-printed with the ADF&G mailing address; however, the data sheets can be submitted to any regional or area ADF&G office. The instructions provide requirements and deadlines for submission. A schedule of charter logbook data sheet due dates is printed inside the front cover of each logbook.

Federal regulations at 50 CFR 300.65(d) require charter vessels operating in IPHC Areas 2C and 3A-and catching and retaining halibut-to complete and submit ADF&G charter logbook data sheets. Four minor modifications to federal regulations are necessary to improve consistency between the regulations and the logbook instructions and to respond to recent revisions to the logbook reporting format by the State.

Proposed Changes to 50 CFR 300.65

The first proposed revision would amend the logbook submission requirements at § 300.65(d)(1)(i) to improve federal consistency with State requirements. Currently, the federal regulation requires submission of the ADF&G charter logbook data sheets to the ADF&G Division of Sport Fish at 333 Raspberry Road in Anchorage, AK, and postmarked no more than seven days after the end of a charter vessel fishing trip. The location and time frame for submitting data sheets are more restrictive than the State requirements, which are printed in the logbook instructions and allow data sheets to be received by any regional or area ADF&G office with deadlines based on a schedule of specific dates for fishing trips completed during any given week. These dates, which vary depending on the calendar year, fall a week after the closing date of each fishing week and, thus, 14 days after the start of each fishing week. The one exception is a mid-April deadline for fishing trips conducted before a date in early April.

The proposed action would revise the submission location and time period for logbook data sheets, and it would remove the requirement to submit data sheets to the ADF&G office on Raspberry Road and change "postmarked" to "postmarked or received" to mirror State regulations that allow data sheets to be mailed or delivered to any ADF&G office. The submission deadline for a charter vessel fishing trip ending April 5 through December 31, during which halibut were retained, would be extended from 7 to 14 days after the end of the trip. The submission deadline for data sheets for a charter vessel fishing trip ending February 1 through April 4, during which halibut were retained, would be submitted no later than April 12.

The remaining proposed revisions are necessary due to recent changes by the State to the ADF&G charter logbook data sheet format. These proposed revisions would eliminate potential confusion that could arise from inconsistent reporting requirements.

The signature requirement at § 300.65(d)(2)(iv)(A) for charter vessel anglers who retain halibut caught in IPHC Area 2C would be revised. Currently, the charter vessel angler is required to sign the back of the ADF&G charter logbook data sheet on the line number that corresponds to the angler's information on the front of the data sheet. State revisions to the data sheet format moved the signature line from the back of the sheet to the front, beneath the line for the angler's name. The proposed action would remove the direction to sign the back of the data sheet and instruct the charter vessel angler to sign the data sheet on the line that corresponds to the angler's information.

Section 300.65(d)(2)(iv)(B)(*1*), which requires the charter vessel guide to record the sport fishing operator business license number on the ADF&G charter logbook data sheet, would be removed. State revisions to the data sheet eliminated the line for this license number. The revised logbook, however, retained the line for this number on the sign-out sheet.

Regulations that instruct how to mark the IPHC regulatory area fished on the ADF&G charter logbook data sheet would either be amended or suspended. For IPHC Regulatory Areas 2C and 3A, the current regulations at § 300.65(d)(2)(iv)(B)(*4*) and

§ 300.65(d)(3), respectively, specify that the charter vessel guides must circle the regulatory area where halibut were caught and retained during each charter vessel fishing trip. This reflected previous logbook instructions that required charter vessel guides to circle the IPHC regulatory area fished, if halibut were kept, and to record the primary ADF&G statistical area where most bottomfish were caught. State revisions to the charter logbook data sheet eliminated the regulatory areas to be circled. The new State format, however, retained the instruction to record the primary statistical area.

Since the State requires the primary statistical area to be recorded on the charter logbook data sheet, NMFS relies on the State to revise the statistical areas along the boundary between IPHC Regulatory Areas 2C and 3A so that the regulatory area where halibut were caught and retained can be identified. The boundary currently crosses multiple statistical areas; consequently, these statistical areas encompass portions of both regulatory areas. The State is revising the statistical areas along the segment of this boundary covered by the ADF&G charter logbook maps. Each new or modified statistical area will be specific to either IPHC Area 2C or Area 3A. ADF&G will update all Southeast Alaska charter logbook maps that include this boundary to show the new and modified statistical areas.

NMFS is requesting public comment on two options. First, if the updated charter logbook maps are available to charter vessel operators before the Secretary makes a decision to approve the final rule for this action and it is published, then, under the proposed action, § 300.65(d)(2)(iv)(B)(*4*) and § 300.65(d)(3) would be removed, and a new paragraph would be added at § 300.65(d)(1)(iii) that describes how to record halibut caught and retained in IPHC Regulatory Areas 2C and 3A. This paragraph would require the charter vessel guide to record on the charter vessel logbook data sheets the primary ADF&G statistical area where halibut were caught and retained. If halibut were caught and retained in IPHC Regulatory Area 2C and Area 3A during the same charter vessel fishing trip, then a separate data sheet must be used to record halibut caught and retained in each regulatory area. For example, on one data sheet, the charter vessel guide would record the halibut caught and retained in IPHC Area 2C, and the primary statistical area in Area 2C where the halibut were caught and retained. On a second data sheet, the charter vessel guide would record the halibut caught and retained in IPHC Area 3A, and the primary statistical area in Area 3A where the halibut were caught and retained.

Second, if the updated charter logbook maps are not available to charter vessel operators before the Secretary makes a decision to approve the final rule for this action and it is published, then, under the proposed action, § 300.65(d)(2)(iv)(B)(*4*) and § 300.65(d)(3) would be suspended. These regulations would be amended after the maps are updated.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Flexibility Act

NMFS prepared an initial regulatory impact review (RIR) and regulatory flexibility analysis (IRFA) for this action. The RIR assesses all costs and benefits of available regulatory alternatives and describes the potential size, distribution, and magnitude of the expected economic impacts of this action. The IRFA, required by section 603 of the Regulatory Flexibility Act (RFA), describes the reasons why this action is being proposed; describes the objectives of, and legal basis for, the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; and identifies any overlapping, duplicative, or conflicting federal rules. The IRFA also describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes, and that would minimize any significant adverse economic impact of the proposed rule on small entities. Copies of the RIR/IRFA are available from NMFS (see ADDRESSES).

The description of the proposed action, its purpose, and its legal basis are described in the preamble and are not repeated in this Classification section. A summary of the RIR/IRFA follows.

The objectives of the proposed rule are to (1) improve consistency between federal and State requirements for the submission of the ADF&G charter logbook data sheets, and (2) address recent State changes to the logbook reporting format. This action will only affect halibut charters operating in IPHC Area 2C and Area 3A.

The changes would bring consistency to State and federal requirements and are expected to impose de minimus costs. The only substantive change (i.e., modification of regulatory limits on directly regulated entities) revises requirements on the location and time frame for submission of logbook data sheets, following charter vessel fishing trips during which halibut were caught and retained.

Based on State logbook data, NMFS estimates that 404 business entities would be directly regulated by this action in Area 2C, and that 450 business entities would be directly regulated by this action in Area 3A. The Secretary has published a final rule that will implement limited entry in the Pacific halibut guided sport charter fisheries in Areas 2C and 3A. NMFS expects that when the limited entry program is fully implemented in 2011, the number of business entities directly regulated by this action would be 231 in Area 2C and 296 in Area 3A.

The largest of these business entities, which are lodges, may be large entities under Small Business Act (SBA) standards, but that determination cannot be empirically confirmed at present. All the other charter operations would likely be considered small entities, based on SBA criteria, since they are believed to have gross revenues of less than $7.0 million on an annual basis, from all sources, including affiliates.

The analysis did not identify any new "projected reporting, recordkeeping and other compliance requirements" associated with the proposed regulatory changes.

This analysis did not reveal any federal rules that duplicate, overlap, or conflict with the proposed action.

There is no alternative to the proposed action with a smaller burden on directly regulated small entities.

Collection of Information

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0575. The public reporting burden for charter vessel guide respondents to fill out and submit logbook data sheets is estimated to average four minutes per response. The public reporting burden for charter vessel anglers to sign the logbook is estimated to be one minute per response. These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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 PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 22, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.65:

a. Remove paragraphs (d)(2)(iv)(B)(*1*), (d)(2)(iv)(B)(*4*), and (d)(3);

b. Redesignate paragraphs (d)(2)(iv)(B)(*2*), (d)(2)(iv)(B)(*3*), (d)(2)(iv)(B)(*5*), (d)(2)(iv)(B)(*6*), (d)(2)(iv)(B)(*7*), and (d)(2)(iv)(B)(*8*), as (d)(2)(iv)(B)(*1*), (d)(2)(iv)(B)(*2*), (d)(2)(iv)(B)(*3*), (d)(2)(iv)(B)(*4*), (d)(2)(iv)(B)(*5*), and (d)(2)(iv)(B)(*6*), respectively;

c. Revise paragraphs (d)(1)(i), (d)(2)(iv)(A), and (d)(2)(iv)(B) introductory text; and

d. Add paragraph (d)(1)(iii) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(d) *Charter vessels in Area 2C and Area 3A* -(1) *General requirements* -(i) *Logbook submission.* For a charter vessel fishing trip ending April 5 through December 31, during which halibut were caught and retained, Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the Alaska Department of Fish and Game and postmarked or received no more than 14 calendar days after the end of that trip. Logbook sheets for a charter vessel fishing trip ending February 1 through April 4, during which halibut were retained, must be submitted to the Alaska Department of Fish and Game and postmarked or received no later than April 12.

* * * * *

(iii) In the Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook, record the primary ADF&G statistical area where halibut were caught and retained during each charter vessel fishing trip. If halibut were caught and retained in IPHC Regulatory Area 2C and Area 3A during the same charter vessel fishing trip, then a separate logbook data sheet must be used for each regulatory area to record the halibut caught and retained within that regulatory area.

(2) * * *

(iv) * * *

(A) *Charter vessel angler signature requirement.* At the end of a charter vessel fishing trip, each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements.* For each charter vessel fishing trip in Area 2C, during which halibut were caught and retained, the charter vessel guide must record the following information (see paragraphs (d)(2)(iv)(B)(*1*) through (*6*) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

* * * * *

[FR Doc. 2010–9737 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100107011–0168–01]

RIN 0648–AY43

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 21

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 21 (Framework 21) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). Framework 21 proposes the following management measures for the 2010 scallop fishery: Total allowable catch (TAC); open area days-at-sea (DAS) and Sea Scallop Access Area (access area) trip allocations; DAS adjustments if an access area yellowtail flounder (yellowtail) TAC is caught; limited access general category (LAGC) access area trip allocations; management measures to minimize impacts of incidental take of sea turtles as required by the March 14, 2008, Atlantic Sea Scallop Biological Opinion (Biological Opinion); minor adjustments to the limited access general category (LAGC) individual fishing quota (IFQ) program; and minor adjustments to the industry-funded observer program. This action also proposes changes to regulatory language to eliminate duplicative and outdated text, and to clarify provisions in the regulations that are currently unclear.

DATES: Comments must be received by 5 p.m., local time, on May 12, 2010.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 21 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Framework 21, the EA, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

You may submit comments, identified by 0648–AY43, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- *Fax:* (978) 281–9135, Attn: Emily Bryant.
- *Mail:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Scallop Framework 21 Proposed Rule."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Policy Analyst, 978–281–9244; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Framework 21 on January 27, 2010, and submitted it to NMFS on March 1, 2010, for review. Framework 21 was developed and adopted by the Council in order to meet the FMP's objectives to prevent overfishing and improve yield-per-recruit from the fishery. The FMP requires biennial adjustments to ensure that the measures meet the fishing mortality rate (F) and other goals of the FMP and achieve optimum yield (OY) from the scallop resource on a continuing basis. This rule proposes Framework 21 measures as adopted by the Council and described in detail here. The 2010 fishing year began on March 1, 2010, and Framework 21 specifies measures only for the 2010 fishing year. Due to late submission, measures will be implemented mid-year. Amendment 15 to the FMP, currently under development by the Council, will identify and implement annual catch limits and accountability measures to bring the FMP into compliance with the new requirements of the re-authorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for the 2011 fishing year and beyond. Framework 22 will be developed by the Council to set the specifications for the 2011 and 2012 fishing years. The Council has reviewed the Framework 21 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Act.

The IFQ Program was implemented on March 1, 2010. As a result, limited access scallop vessels, limited access scallop vessels with LAGC IFQ permits, and LAGC IFQ vessels will receive 94.5 percent, 0.5 percent, and 5 percent of the allocated target TAC, respectively, after accounting for applicable research and observer set-asides.

Acceptable Biological Catch (ABC) and TAC

The Magnuson-Stevens Act requires that an ABC be set in each fishery. The ABC is defined as a level of a stock's annual catch, after accounting for the scientific uncertainty in the estimate of the catch level above which overfishing would be occurring, as well as any other scientific uncertainty. The Council's Scientific and Statistical Committee (SSC) recommended an ABC for the 2010 scallop fishery based on an F of 0.284, which results in a TAC of 57,803,000 lb (26,219 mt) after accounting for discards and incidental mortality. The calculation on which this ABC recommendation is based assumes that mortality in the scallop fishery is spatially and temporarily uniform, and that all exploitable scallop biomass is accessible to the fleet. However, due to various rotational and permanent closures, as well as area-based differences in F, a lower F target should be set to prevent localized overfishing in areas that are accessible to the fleet. As a result, the Council based the target TAC on an F of 0.24. This results in a TAC of 47,278,000 lb (21,445 mt).

After the deduction of the incidental target TAC (50,000 lb, 22.7 mt) allocated to vessels with LAGC incidental permits, the remaining TAC is 47,228,000 lb (21,422 mt). This TAC is allocated into several components: Open area DAS; individual access area trips for limited access vessels; IFQ allocations, including access area allocations, to vessels with LAGC IFQ permits; and research and observer set-asides.

Open Area DAS Allocations

This action would implement the following vessel-specific DAS allocations for the 2010 fishing year: Full-time vessels would be allocated 38 DAS; part-time vessels would be allocated 15 DAS; and occasional vessels would be allocated 3 DAS.

The proposed measures would be implemented after the start of the fishing year (FY) on March 1, 2010. The regulations that are currently in effect for FY 2010 (*i.e.,* March 1, 2010, through February 28, 2011) are inconsistent with proposed Framework 21 specifications, so it is possible that scallop vessels could exceed their DAS allocations during the interim period between March 1, 2010, and the implementation the proposed DAS. Therefore, this action specifies that any limited access open area DAS used in FY 2010 by a vessel that is above the final FY 2010 allocation for that vessel would be deducted from the vessel's FY 2011 DAS allocation.

Open Area DAS Adjustment if Access Area Yellowtail TAC Is Attained

Under the Northeast Multispecies FMP, 10 percent of the Southern New England (SNE) yellowtail TAC is allocated to scallop vessels fishing in the Nantucket Lightship Access Area (NLAA). If the SNE yellowtail TAC is caught, the NLAA would be closed to further scallop fishing for the remainder of the fishing year. If a vessel has unutilized trip(s) after the access area is closed due to reaching the yellowtail TAC, it would be allocated additional open area DAS at a reduced rate. This trip/DAS conversion would apply only to full-time vessels, and to occasional or part-time vessels that have no other available access areas in which to take their access area trip(s). Unused access area trip(s) would be converted to open area DAS so that scallop fishing mortality that would have resulted from the access area trip(s) would be equivalent to the scallop fishing mortality resulting from the open area DAS allocation. Consequently, if the NLAA is closed in FY 2010, each vessel with unutilized trip(s) would be allocated a specific amount of additional open area DAS according to permit category. Full-time vessels would be allocated 5.8 DAS per unutilized trip in the NLAA. If part-time and occasional vessels have no available access areas in which to take an unused trip, they would be allocated 4.6 DAS and 1.9 DAS, respectively. Although the Council did not specify this measure regarding occasional and part-time vessels in Framework 21, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of

the Magnuson-Stevens Act, consistent with scallop measures in previous years.

If a vessel has unused compensation trip(s) from a previously broken trip(s) when the access area closes due to reaching the yellowtail TAC, it would be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) NLAA compensation trip (half of the full possession limit) at the time of a NLAA yellowtail TAC closure, the vessel would be allocated 2.9 DAS (half of the 5.8 DAS that would be allocated for a full NLAA trip). Although the Council did not specify this measure regarding broken trip compensation in Framework 21, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act, consistent with scallop measures in previous years.

Limited Access Trip Allocations, and Possession Limits for Scallop Access Areas

In FY 2010, full-time scallop vessels would be allocated one trip in the NLAA, two trips in the Elephant Trunk Access Area (ETAA), and one trip in the Delmarva Access Area (Delmarva). A part-time scallop vessel would be allocated two trips, which could be taken as follows: Two trips in the ETAA; one trip in the ETAA and one trip in the NLAA; one trip in the ETAA and one trip in Delmarva; or one trip in NLAA and one trip in Delmarva. An occasional vessel would be allocated one trip, which could be taken in any one open access area. The FY 2010 limited access scallop possession limit for access area trips would be 18,000 lb (8,165 kg) for full-time vessels, 14,400 lb (6,532 kg) for part-time vessels, and 6,000 lb (2,723 kg) for occasional vessels.

Because the proposed measures would be implemented after March 1, 2010, and the regulations that are currently in effect are inconsistent with proposed specifications, it is possible that scallop vessels could exceed their access area trip allocation during the interim period between March 1, 2010, and the implementation of final measures implementing Framework 21. For example, there are currently three ETAA trips allocated for full-time scallop vessels, but only two trips are proposed in this action. If a full-time vessel takes three trips into the ETAA during FY 2010, the vessel's FY 2011 trip allocation would be reduced by one trip to account for the FY 2010 overage. No access area trips are currently allocated for the NLAA, so no trips into that area could be taken until a final rule is effective for this action.

In addition, the current FY 2010 regulations provide part-time and occasional vessels a higher possession limit than this action proposes, which would be in effect during the interim period between March 1, 2010, and the date that final measures for Framework 21 are in effect. The current regulations allow for a part-time vessel and occasional vessel to land up to 18,000 lb (8,165 kg) and 7,500 lb (3,402 kg) per access area trip, respectively, but this would be reduced to 14,400 lb (6,532 kg) and 6,000 lb (2,722 kg) per access area trip, respectively. If a part-time or occasional vessel exceeds its final FY 2010 possession limit, the overage will be deducted from that vessel's FY 2011 possession limit allocation. Although the Council did not specify this measure regarding part-time and occasional vessel possession limit overages in Framework 21, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

LAGC Measures

1. TAC for LAGC vessels with IFQ permits. This action proposes a 2,326,700-lb (1,055-mt) annual TAC for LAGC vessels with IFQ permits for FY 2010. IFQ allocations would be calculated by applying each vessel's IFQ contribution percentage to this TAC.

2. *TAC for Limited Access Scallop Vessels with IFQ Permits.* This action proposes a 232,670-lb (106-mt) annual TAC for limited access scallop vessels with IFQ permits for FY 2010. IFQ allocations would be calculated by applying each vessel's IFQ contribution percentage to this TAC.

3. *LAGC IFQ Trip Allocations and Possession Limits for Scallop Access Areas.* The LAGC IFQ fishery would be allocated 5 percent of the overall ETAA, NLAA, and Delmarva TACs, resulting in a fleet-wide trip allocation of 1,377 trips in the ETAA and 714 trips in both the NLAA and in Delmarva. The areas would close to LAGC vessels when the Regional Administrator determines that the allocated number of trips have been taken in the respective areas.

Because this action would be implemented mid-year, and the current regulations are inconsistent with the proposed specifications, it is possible that LAGC scallop vessels could exceed the final FY 2010 fleet-wide trip allocations in the ETAA and Delmarva. The current regulations allocate 1,964 and 728 trips in the ETAA and Delmarva, respectively. If general category vessels exceed the final number of allocated trips from the ETAA or Delmarva in FY 2010, the number of excess trips would be deducted from the LAGC IFQ fleet access area trip allocation in FY 2011 in the ETAA or Delmarva, respectively. Although the Council did not address this scenario for Delmarva in their Framework 21 document, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

4. *Northern Gulf of Maine (NGOM) TACS.* This action proposes a 70,000-lb (31,751-kg) annual NGOM TAC for FY 2010.

5. *Scallop Incidental Catch Target TAC.* This action proposes a 50,000-lb (22,680-kg) scallop incidental catch target TAC for FY 2010 to account for mortality from this component of the fishery and to ensure that F targets are not exceeded.

Research Set-Aside (RSA) Allocations

Two percent of each scallop access area quota and 2 percent of the DAS allocation are set aside as the Scallop RSA to fund scallop research and to compensate participating vessels through the sale of scallops harvested under RSA quota. The FY 2010 RSA access area allocations would be: NLAA—117,820 lb (53 mt); ETAA—227,060 lb (103 mt); and Delmarva—117,700 lb (53 mt). The FY 2010 RSA DAS allocations would be 269 DAS.

Observer Set-Aside Allocations

One percent of each scallop access area quota and 1 percent of the DAS allocation are set aside as part of the industry-funded observer program to help defray the cost of carrying an observer. Scallop vessels on an observed DAS trip are charged a reduced DAS rate, and scallop vessels on an observed access area trip are authorized to have an increased possession limit. The Regional Administrator has specified the following compensation rate for the start of FY 2010: Vessels carrying an observer will receive 180 lb (82 kg) of scallops per day, or part of a day, in ETAA and Delmarva, and limited access DAS vessels will be compensated 0.10 DAS per DAS fished during observed open area trips (*i.e.*, vessels will be charged 0.90 DAS per DAS fished with an observer onboard). The Regional Administrator will review all available fishery information to determine if these rates should be adjusted in response to the final Framework 21 measures. The

2010 observer set-aside access area allocations would be: NLAA—58,910 lb (27 mt); ETAA—113,530 lb (52 mt); and Delmarva—58,850 lb (27 mt). The FY 2010 DAS observer set-aside allocations would be 135 DAS.

Reasonable and Prudent Measures

Under the Endangered Species Act, each Federal agency is required to ensure its actions are not likely to jeopardize the continued existence of any listed species or critical habitat. If a Federal action is likely to adversely affect a listed species, formal consultation is necessary. Five formal Section 7 consultations, with resulting Biological Opinions, have been completed on the Atlantic sea scallop fishery to date. All five have had the same conclusion: The continued authorization of the scallop fishery may adversely affect, but is not likely to jeopardize the continued existence of four sea turtles species (loggerhead, green, Kemp's ridley, and leatherback). In the accompanying Incidental Take Statement of the Biological Opinions, NMFS is required to identify and implement non-discretionary reasonable and prudent measures (RPMs) necessary or appropriate to minimize the impacts of any incidental take, as well as Terms and Conditions (T/C) for implementing each RPM. RPMs and T/C cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes.

Five RPMs and T/Cs were identified in the most recent Biological Opinion, as amended February 5, 2009. Framework 21 includes management measures to comply with the first of these RPMs, which required a limit of fishing effort in the Mid-Atlantic during times when sea turtle distribution is expected to overlap with scallop fishing activity. The Biological Opinion required that this restriction on fishing effort must be in place no later than FY 2010 and shall be limited to a level that will not result in more than a minor impact on the fishery.

For FY 2010, Framework 21 defines a "more than minor impact" on the fishery as one that would result in a 10-percent shift in baseline effort from the Mid-Atlantic during June 15 through October 31 into other areas and times of year when sea turtle interactions are less likely. This definition, as well as management measures to comply with the Biological Opinion and any future Biological Opinions, will be reevaluated for future fishing years in Framework 22 and subsequent actions.

This action proposes to close the Delmarva access area from September 1, 2010, through October 31, 2010. In addition, because the ETAA and Delmarva are in the Mid-Atlantic, full-time limited access vessels would be restricted to taking two of the access area trips allocated to those areas during the period June 15, 2010, through August 31, 2010. The Council proposed this trip restriction measure with the intention that there would be no change in the possession limit for trips taken during June 15, 2010, through August 31, 2010, and that the broken trip provision would apply to all trips. In order to be consistent with the Council's rationale, and under the authority of section 305(d) of the Magnuson-Stevens Act, NMFS proposes that full-time limited access vessels would be restricted to taking two of the access area trips allocated to those areas, or to maximum landings of 36,000 lb (16,329 kg) from those areas (*i.e.*, the equivalent of two access area trips). Compliance with the trip restriction would be monitored by pounds landed during June 15, 2010, through August 31, 2010, rather than trip declarations, which could result in landings that are less than the allowable trip possession limit. The additional pounds allocated to vessels with on-board observers during trips taken within this time period would not count towards this 36,000-lb (16,329-kg) limit. If a vessel fishes any part of an access area trip in the ETAA or Delmarva during this time period (*i.e.*, starts a trip on June 13, 2010, and ends the trip on June 15, 2010), landings from that trip would count towards the two-trip limit.

In addition, compensation trips may not be combined during this time period in a way that would allow more than 36,000 lb (16,329 kg) to be landed from the ETAA or Delmarva from June 15, 2010, through August 31, 2010. For example, a full-time vessel is allocated three total trips into the Mid-Atlantic access areas. If that vessel declared and subsequently broke one of the three trips into Mid-Atlantic access areas prior to June 15, it would have two full trips (*i.e.*, 36,000 lb, 16,329 kg) available for use during the trip-restriction window. In that case, the vessel could only harvest up to 36,000 lb (16,329 kg) total from June 15, 2010, through August 31, 2010, in the Mid-Atlantic access areas, either by fishing its compensation trip and one full access area trip or by fishing two full access area trips and waiting to declare the compensation trip on or after November 1, 2010 (*i.e.*, after the ETAA and Delmarva seasonal closures). Although the Council did not address specifically how compensation trips would be adjusted in order to comply with the Biological Opinion in its Framework 21 document, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

Part-time and occasional vessels would not be affected by this trip restriction because they are not allocated more than two trips during the entire fishing year. LAGC IFQ vessels would not be affected by this trip.

Adjustments to the Industry-Funded Observer Program

The following measures were developed by the Council and are proposed to improve the administration of the industry-funded observer program.

1. *Limit the amount of observer compensation LAGC IFQ vessels can possess per observed trip in access areas.* Currently, LAGC IFQ vessels are allowed to retain observer compensation in the form of a daily possession limit, as established by the Regional Administrator. In FY 2009, it was apparent that some LAGC vessels were extending the length of their observed trips into access areas in order to land additional scallops. This resulted in observer compensation in excess of the amount necessary to pay for the observer costs for these trips. This was one factor that resulted in the full harvest of the observer set-aside in FY 2009.

To account for this unintended result, this action proposes that the possession limit to defray the cost of an observer for LAGC IFQ vessels fishing in access areas would be specified by trip, not by fishing day. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit would be 180 lb (82 kg) per observed trip. In this scenario, an LAGC IFQ vessel with an onboard observer would be able to land up to 580 lb (263 kg), the sum of its regular possession limit of 400 lb (181 kg) plus the additional observer possession limit increase, during an access area trip, regardless of trip length.

2. *Providers may charge a prorated fee for vessels fishing in access areas if the observer set-aside has been fully harvested.* The current regulations require providers to charge a vessel owner for observer fees based on a calendar day, not per hour, to coincide with the daily rate of observer set-aside compensation. The regulation omitted regulatory text that would require the provider to adjust the fee if the set-aside is exhausted. Therefore, when the set-

asides were exhausted in FY 2009, and vessel owners continued to pay for observers, the fee was based on a full calendar day instead of an hourly prorated fee. In some cases the charges were considered excessive, but were required by the regulations.

This proposed measure would specify that if the observer set-aside for a given FY is fully exhausted prior to the end of the FY, service providers must prorate their fees on an hourly basis, similar to how observer fees are charged for vessels fishing on open area scallop trips.

Although the Council did not specify this measure regarding observer prorated fees in Framework 21, it is a necessary component of the observer set-aside program. Therefore, based on the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

Adjustments to the IFQ Program

This action proposes a measure that would allow the owner of an IFQ vessel or IFQ confirmation of permit history (CPH) to lease a portion of its IFQ to or from another IFQ vessel during a single FY. The current regulations allow leasing only of an entire IFQ; under the proposed measure a vessel owner could lease some or all of an IFQ allocation. This alternative would only apply to leases, and not to permanent transfers, which would still require a vessel's entire IFQ allocation to be transferred permanently. Vessel owners intending to lease some or all of their IFQ allocation to another IFQ vessel(s) may not fish any of their IFQ allocation prior to the lease transaction.

This action would require partial IFQ leases to be at least 100 lb (45 kg). If a vessel owner has previously leased a portion of the vessel's IFQ, and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ could be transferred in full to another vessel. Although the Council did not specify this measure regarding IFQ balances of less than 100 lb as the result of a previous lease, based on other Framework 21 measures adopted by the Council and the overall objectives of the FMP, NMFS proposes this measure under the authority of section 305(d) of the Magnuson-Stevens Act.

NMFS is also proposing several revisions to the regulatory text that were duplicative and unnecessary, outdated, unclear, or otherwise could be improved through revision. These were not recommended by the Council, but are necessary for the effective implementation and enforcement of the regulations. For example, the current vessel monitoring system (VMS) regulations that were included through Amendment 11 and pertain to required submission of pre-landing notification forms are currently difficult to distinguish from other VMS catch report requirements in the regulations. NMFS proposes to revise the regulations to clarify the regulations intended by Amendment 11 and to provide more ease in locating these requirements in § 648.10. In addition, this action proposes several revisions to the regulatory text that update the FYs when access areas will be open and rotational closed areas will be in effect, according to the current access area rotational management schedule. This action also proposes revisions that would remove text pertaining to regulations from prior fishing years that are no longer in effect. NMFS makes these changes consistent with section 305(d) of the Magnuson-Stevens Act.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows.

Statement of Objective and Need

This action proposes the FY 2010 management measures and specifications for the Atlantic sea scallop fishery. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of this proposed rule and are not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The vessels in the Atlantic sea scallop fishery are all considered small business entities and, therefore, there is no disproportionate impact on large and small entities. All of the vessels grossed less than $3 million according to dealer data for the FYs 1994 through 2008. According to this information, annual total revenue, including revenue from species other than scallops, has averaged over $1 million per full-time limited access vessel since FY 2004. According to FY 2008 dealer data, total revenue per vessel, including revenue from species other than scallops, averaged $1,079,722 per full-time limited access vessel and $135,378 per general category vessel.

The proposed regulations would affect all Federal scallop vessels. The Framework 21 document provides extensive information on the number and size of vessels and small businesses that would be affected by the proposed regulations, by port and state. In FY 2008 (the most recent complete FY for which data are complete), there were 321 full-time, 34 part-time, and 1 occasional limited access scallop permits issued, and 459 general category permits issued to vessels in the LAGC fishery. Amendment 11 to the FMP established a limited access fishery for general category vessels and the appeals and limited access permit process for the LAGC fleet was completed in January 2010. There are now 329 vessels that qualified for IFQ permits, 40 limited access vessels that qualified for IFQ permits, 107 vessels that qualified for NGOM permits, and 288 vessels that qualified for incidental permits.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains no new collection-of-information, reporting, and recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal law.

Economic Impacts and Proposed Measures and Alternatives

Summary of the Aggregate Economic Impacts

A detailed analysis of the economic impacts of the proposed actions may be found in Section 5.4 of the Framework 21 document. All the values for economic impacts discussed below are presented in terms of 2008 dollars and the projected values presented use a 7-percent discount rate to compare results to current values.

If approved, Framework 21 will be implemented after the start of FY 2010 (March 1, 2010). As a result, the current management measures and allocations are extended into FY 2010, including trip allocations for access areas and an open area allocation of 42 DAS per full-time limited access vessel, 17 per part-time vessel, and 3 per occasional vessel.

The aggregate economic impacts of the proposed measures, including the open area DAS and access area allocations for limited access vessels and TAC for the LAGC fishery, are expected to be slightly negative in FY

2010 compared to the No Action alternative and compared to the average revenue in FYs 2008 and 2009. The impact of five FY 2010 quota allocation alternatives were evaluated by Framework 21: Two alternatives proposing a new closure in the Great South Channel with different fishing mortality rates (F=0.18 and F=0.20), two alternatives with no new closure with different fishing mortality rates (F=0.20 and F=0.24), and the No Action alternative, which results in an F=0.25. The alternative with no new closure and F=0.24 will be referred to below as the proposed action. The non-selected alternatives will be referred to as Closure (0.18), Closure (0.20), No Closure (0.20), and No Action, respectively. Under all alternatives, the total number of access area trips allocated to limited access vessels remain the same, although the No Action alternative would allocate those trips to less productive areas than all other alternatives.

Economic Impacts of the Proposed Measures and Alternatives

1. DAS Allocations and Access Area Trip Allocations—Aggregate Impacts

The proposed open area DAS allocations are expected to prevent overfishing in open areas. The proposed action would implement the following vessel-specific DAS allocations for FY 2010: Full-time vessels would be allocated 38 DAS; part-time vessels would be allocated 15 DAS; and occasional vessels would receive 3 DAS. The analysis of the fleet-wide aggregate economic impacts indicate that the proposed action will have slightly negative economic impacts on the revenues and profits of the scallop vessels in FY 2010, compared with the No Action alternative and compared to the levels in FYs 2008 and 2009. Because the proposed action will reduce the open area DAS allocations from 42 DAS to 38 DAS for each full-time limited access vessel (with similar reductions, proportionally for part-time and occasional vessels), the total landings will decline by 6 percent in FY 2010, from 50 million under No Action to 47 million under the proposed action, reducing 2010 revenues for an average vessel by about 2 percent. In comparison to FYs 2008 and 2009 average, the proposed action will result in a 14-percent decrease in landings, representing a 2.3-percent decrease in revenues. The percentage decline in revenues is less than the percentage decline in landings because the price per pound of scallops is estimated to be higher for the proposed action ($7.27 per pound) compared with No Action ($7.07 per pound), the price in FY 2008 ($6.92), and the price in FY 2009 ($6.45).

Although the proposed action will produce slightly less revenue in FY 2010 compared to FYs 2008 and 2009, the proposed action, as well as the Closure (0.18), Closure (0.20), and No Closure (0.20) alternatives, will result in higher revenues for full-time limited access vessels from FY 2011 through FY 2016.

Over the short term, from FY 2010 through FY 2016, the proposed action's cumulative revenues are estimated to be slightly lower than the No Action revenues by $9 million, representing a 0.3-percent decrease. However, the No Action alternative does not prevent overfishing and would result in suboptimal allocation of open area DAS and access area trips. Under the No Action alternative, there is no access into the NLAA, but the biomass in that area can support one trip. In addition, under No Action, open area DAS allocations would be higher than sustainable levels because there is no adjustment to reflect the present conditions of biomass in those areas. For these reasons, the levels of exploitable biomass for the No Action alternative will be less than the levels for the proposed action and all the other alternatives. Consequently, No Action would have long-term negative impacts on the scallop stock biomass, landings, revenues, and economic benefits of the scallop fishery. Over the long term (FYs 2010 to 2023), the proposed action will generate $53 million more in total revenues than the No Action alternative.

The Closure (0.20) and Closure (0.18) alternatives allocate higher DAS (51 and 42 DAS, respectively) to full-time vessels than the proposed alternative and would have positive economic impacts on scallop vessels in FY 2010. However, these alternatives would have negative biological impacts because the new rotational area closure resulted in a higher area-swept estimate in the Mid-Atlantic open area, which may have impacts on non-target species in those areas and increase the possibility of localized overfishing in open areas. If these negative biological impacts were to occur as a result of the Closure (0.18) or Closure (0.20) alternatives, more stringent measures would have to be taken in the future to reduce effort, with potentially negative impacts on the scallop vessels. Therefore, these alternatives are not expected to generate higher benefits for the scallop vessels in the long term compared to the proposed action.

The revenue for an average full-time limited access vessel is estimated to be $931,799 for the proposed action, which ranges from $108,152 to $18,661 lower than the Closure (0.18), Closure (0.20), and No Action alternatives. However, because the proposed action will allocate fewer open area DAS in FY 2010 compared to these three alternatives, and also will allocate access area trips in more productive areas compared to No Action, the trip costs would be comparatively reduced. The average trip costs per vessel ($111,621) would decline by a range of 20 to 9 percent in comparison to the higher DAS alternatives. The allowance for carry-over DAS is another factor that could also mitigate some of the negative impacts of the proposed action on vessel revenues and profits in FY 2010. Vessels may save up to 10 of their open area DAS in FY 2009 to mitigate the slightly smaller FY 2010 DAS allocations compared to No Action, Closure (0.18), or Closure (0.20) alternatives.

Although the No Closure (0.20) alternative would produce the greatest benefits over the long term, it would result in a 13-percent and 11-percent loss in FY 2010 average annual revenue compared to No Action and the proposed action, respectively. The proposed action would result in average FY 2010 revenues that are $109,563 greater than the No Closure (0.20) alternative. Although the proposed action will have marginally smaller positive long-term economic impacts in comparison to the No Closure (0.20) alternative, Framework 21 is only addressing the allocations for FY 2010 and future management measures in FY 2011 and beyond will affect these forecasts.

Under all alternatives, including No Action, the LAGC fleet is allocated 5 percent of the TAC. This means the relative comparison of the proposed action to the other alternatives is similar to the limited access fleet. For example, similar to full-time limited access vessels, the revenues of LAGC vessels are expected to be 2 percent lower under the proposed action than under No Action in FY 2010.

Compared to FYs 2008 and 2009, however, the revenues of LAGC vessels will decline by a larger percentage due to the implementation of the IFQ program, as required by Amendment 11 to the FMP. The total scallop revenue for the general category fishery was estimated to be $30.8 million for FY 2008 and $29.6 million for FY 2009, averaging $30.2 million across both FYs. During FYs 2008 and 2009, the LAGC fishery was under a transition period while the final decisions for IFQ permit

appeals were determined. The transition period allocated 10 percent of the TAC to LAGC IFQ vessels, as well as vessels that were granted a letter of authorization to fish for scallops while their IFQ permit applications were under appeal. FY 2010 marks the first year that the IFQ program is in effect, and LAGC IFQ vessels are now allocated 5 percent of the TAC. As a result, revenues for LAGC vessels under the proposed action are projected to be $17 million, representing a 43-percent decline. The short- and long-term economic impacts of allocating 5 percent of the total TAC to LAGC vessels were analyzed in Amendment 11 to the FMP. The economic impacts of the proposed TAC are within the range of the impacts previously analyzed in these documents.

The proposed action will have positive economic impacts for the LAGC fishery starting in FY 2011, as the LAGC TAC is expected to increase compared to the FY 2010 allocation.

2. Open Area DAS Adjustment if Access Area Yellowtail TAC Is Attained

The proposed action maintains a provision that allocates additional open area DAS if an access area closes due to the attainment of the scallop yellowtail TAC. This would continue the current measures with the same impacts as the No Action alternative. This conversion will help to minimize lost catch and revenue if the NLAA closes due to the full harvest of yellowtail quota. As a result, this measure will have positive economic impacts on scallop vessels, although the scallop pounds per trip could be lower than the allocated pounds for NLAA trips due to proration to assure that the measure is conservation neutral. There were no alternatives considered that would generate higher economic benefits for the participants of the scallop fishery.

3. Research and Observer Set-Aside TACs

The proposed action would continue to set aside 2 percent of the scallop TAC for the RSA program and 1 percent of the scallop TAC for the industry-funded observer set-aside program. These set-asides are expected to have indirect economic benefits for the scallop fishery by improving scallop information and data made possible by research and the observer program. Although allocating higher set-aside percentages could result in higher indirect benefits to the scallop fleet by increasing available funds for research and the observer program, these set-aside increases could decrease direct economic benefits to the fishery by reducing revenues, and no such alternatives were considered.

4. Access Area Management

The proposed action and the alternatives include access into both ETAA and Delmarva for both the limited access DAS and LAGC fleets. By itself, allocations for these highly productive areas in FY 2010 will have positive economic impacts on both limited access and LAGC vessels. The only alternative that would generate higher benefits than the proposed action is the No Action alternative, which would allocate three trips to ETAA. This number of trips is higher than the projected biomass in that area can support. As a result, the No Action alternative would have negative impacts on the biomass and yield from the ETAA after FY 2010. As experienced in the Hudson Canyon Access Area in FY 2005, excessive harvest in an access area can lead to rapid, almost immediate, depletion of the area's resource, leading to poor catch rates and elevated fishing costs.

The proposed action and alternatives considered, with the exception of No Action, all would allocate one access area trip into the NLAA. The biomass in this area is estimated to be high and trip costs will be lower because the same amount of scallops could be landed in a shorter time frame compared to areas with lower scallop abundance. Providing allocations to high abundance areas will help increase yield, landings, and revenues from the fishery both in the short and long term, benefiting both limited access and LAGC vessels that participate in the scallop fishery. Because there is no trip allocation to the NLAA area under No Action, economic benefits would be lower both in the short and long term compared to the proposed alternative, and other alternatives considered.

5. NGOM Hard TAC

The proposed action specifies a 70,000-lb (31,751-kg) TAC for the NGOM. This is the same TAC as the No Action alternative and all other alternatives. The FMP specifies that the NGOM TAC should be based on historic landings levels until the stock in the NGOM can be assessed formally, and there has been no stock assessment to date. The NGOM TAC has been specified at this level since FY 2008, and the fishery has harvested less than 15 percent of the TAC in each of those years, therefore, the TAC has no negative economic impacts.

6. Allow Leasing of Partial LAGC IFQ Allocations

LAGC IFQ allocations can only be leased in their entirety under current regulations. The proposed action would allow LAGC IFQ vessels owners (or IFQ CPH owners) to lease some or all of their IFQ allocations to other vessels during a given FY. The proposed action would provide increased flexibility for LAGC IFQ vessel owners. As a result, this measure would have positive impacts on vessel revenues and profits. The only alternative is the No Action alternative, which would require that vessel owners lease entire unused quota allocations.

7. Reasonable and Prudent Measures

The proposed action would close the Delmarva access area in September and October and would limit the maximum number of trips (two per full-time vessel) that can be taken in the Mid-Atlantic areas from June 15 to August 31. Because fishing effort is shifted to a relatively less productive season, total fleet trip costs are expected to increase slightly (*i.e.,* less than 0.2 percent) due to reduced scallop catch rates. Since there is no change in the scallop possession limit, the trips that are shifted from this season are expected to be taken outside of this time period without a loss in total revenue, as long as this measure does not, as expected, have a negative impact on prices. The closure in the Delmarva access area from September 1–October 31 applies to all scallop vessels, including LAGC IFQ vessels. This measure is not expected to affect the LAGC fleet specifically, since the access area trips for this fleet are allocated as a fleet-wide number of trips, and tend to be used outside of the closure period. No other alternatives considered would generate higher benefits for the scallop vessels, other than the No Action alternative. The No Action alternative, however, would not comply with the RPMs specified in the Biological Opinion. The proposed action is expected to minimize the effort shift from the given time period compared to the other action alternatives considered by the Council; thus, there are no other alternatives that would generate higher benefits for the scallop vessels.

8. Limit the Amount of Observer Compensation for LAGC Vessels in Access Areas

The proposed action includes a provision to limit the total amount of observer compensation LAGC IFQ vessels can receive on observed trips in access areas to the equivalent of 1 day's compensation, regardless of trip length.

The No Action alternative would continue to provide LAGC IFQ vessels observer compensation on a daily basis and would generate higher benefits for the scallop vessels while the observer set-aside is available. This, however, may exhaust the set-aside TAC before the end of the FY. The current LAGC IFQ access area observer compensation contributed to fully harvesting the FY 2009 observer set-aside earlier than anticipated. This had negative impacts fleet-wide because vessels had to provide full payment to observers without available observer compensation after the observer set-aside was exhausted, with negative impacts that were not equally distributed across the fleet.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 22, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, revise paragraph (f)(4) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(f) * * *

(4) *Catch reports.* (i) All scallop vessels fishing in the Sea Scallop Area Access Program as described in § 648.60 are required to submit daily reports, through VMS, of scallops kept and yellowtail flounder caught (including discarded yellowtail flounder) on each Access Area trip. The VMS catch reporting requirements are specified in § 648.60(a)(9).

(ii) *Pre-landing notification forms for IFQ and NGOM vessels.* Using the Scallop Pre-Landing Notification form, a vessel issued an IFQ or NGOM scallop permit must report through VMS the amount of any scallops kept on each trip declared as a scallop trip, including declared scallop trips where no scallops were landed. In addition, vessels with an IFQ or NGOM permit must submit a Scallop Pre-Landing Notification form on trips that are not declared as scallop trips, but on which scallops are kept incidentally. A limited access vessel that also holds an IFQ or NGOM permit must submit the Scallop Pre-Landing Notification form only when fishing under the provisions of the vessel's IFQ or NGOM permit. VMS Scallop Pre-Landing Notification forms must be submitted no less than 6 hr prior to crossing the VMS Demarcation Line on the way back to port, and must include the amount of scallop meats or bushels to be landed, the estimated time of arrival in port, the port at which the scallops will be landed, and the VTR serial number recorded from that trip's VTR. If the scallop harvest ends less than 6 hr prior to landing, then the Scallop Pre-Landing Notification form must be submitted immediately upon leaving the fishing grounds.

* * * * *

3. In § 648.11, revise paragraph (g)(5)(i)(A) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(g) * * *

(5) * * *

(i) * * *

(A) *Access Area Trips.* (*1*) For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area when the observer set-aside specified in § 648.60(d)(1) has not been fully utilized, a service provider shall charge a vessel owner from the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, or any portion of a 24-hr period, regardless of the calendar day. For example, if a vessel with an observer departs on July 1 at 10 pm and lands on July 3 at 1 am, the time at sea equals 27 hr, which would equate to 2 full "days."

(*2*) For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area when the industry-funded observer set-asides have been fully utilized, a service provider shall charge a vessel owner from the time an observer boards a vessel until the vessel disembarks (dock to dock), where "day" is defined as a 24-hr period, and portions of the other days would be pro-rated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on July 1 at 10 pm and lands on July 3 at 1 am, the time spent at sea equals 27 hr, so the provider may charge 1 day and 3 hr.

* * * * *

4. In § 648.14, paragraphs (i)(2)(vi)(F) and G) are added, paragraph (i)(4)(i)(A) is revised, and paragraph (i)(4)(iii)(F) is removed and reserved to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(vi) * * *

(F) Declare more than two access area trips into the Delmarva and Elephant Trunk Access Areas, as specified in § 648.59(a) and (e), during the period June 15 through August 31, unless at least one trip is terminated early and trips in excess of two are declared compensation trips authorized under § 648.60(c); and

(G) Vessels do not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops from the Delmarva and Elephant Trunk Access Areas specified in § 648.59(a) and (e) during the period June 15 through August 31. This restriction does not include the additional possession allowance to defray the cost of carrying an observer, as specified in § 648.60(d), that occur during observed trips between June 15 through August 31.

* * * * *

(4) * * *

(i) *Possession and landing.* (A) Fish for or land per trip, or possess at any time, in excess of 400 lb (181.4 kg) of shucked, or 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line, unless the vessel is participating in the Area Access Program specified in § 648.60; is carrying an observer as specified in § 648.11; and, an increase in the possession limit is authorized by the Regional Administrator and not exceeded by the vessel, as specified in §§ 648.52(g) and 648.60(d)(2).

* * * * *

5. In § 648.52, paragraphs (a) and (f) are revised, and paragraph (g) is added to read as follows:

§ 648.52 Possession and landing limits.

(a) A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery as specified in § 648.10(b), unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 400 lb (181.4 kg) of shucked scallops, or possess more than 50 bu (17.6 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hl) of in-shell scallops seaward of the

VMS demarcation line on a properly declared IFQ scallop trip.

* * * * *

(f) A vessel that is declared into the Sea Scallop Area Access Program as described in § 648.60, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

(g) *Possession limit to defray the cost of observers in Access Areas for LAGC IFQ vessels.* An LAGC IFQ vessel with an observer on board may retain, per observed trip, up to 1 day's allowance of the possession limit allocated to limited access vessels, as established by the Regional Administrator in accordance with § 648.60(d), provided the observer set-aside specified in § 648.60(d)(1) has not been fully utilized. For example, if the limited access vessel daily possession limit to defray the cost of an observer is 180 lb (82 kg), the LAGC IFQ possession limit to defray the cost of an observer would be 180 lb (82 kg) per trip, regardless of trip length.

6. In § 648.53, paragraphs (a)(1), (a)(4)(i), (a)(5), (a)(9), (b)(1), (b)(4), (b)(5)(i), (g)(1), (g)(2), (h)(5)(i), (h)(5)(iii), (h)(5)(iv)(A), (h)(5)(iv)(B), and (h)(5)(iv)(C) are revised; the introductory text in paragraph (h)(2) is revised; and paragraphs (a)(2), (a)(4)(ii), (a)(7), (a)(8), and (b)(5)(ii) are removed and reserved to read as follows.

§ 648.53 Target total allowable catch, DAS allocations, and Individual Fishing Quotas.

(a) * * *

(1) *2010 fishing year target TAC for scallop fishery.* The 2010 fishing year TAC is 21,445 mt, 94.5 percent of which shall be allocated to the limited access fishery, 5 percent of which shall be allocated to IFQ scallop vessels, and 0.5 percent of which shall be issued to limited access vessels also issued IFQ scallop permits and that are fishing under general category regulations. These percentages reflect the TAC allocations prior to the deduction of set-asides for observer coverage and research.

* * * * *

(4) * * *

(i) *2010 fishing year.* The target TAC for limited access vessels fishing under the scallop DAS program specified in this section is 10,330 mt, including open area DAS for observer and research set-aside TACs.

* * * * *

(5) *TACs for IFQ scallop vessels.* The TACs specified in this paragraph (a)(5) have accounted for the access area set-asides specified in § 648.60(d) and (e).

(i) *IFQ vessels without a limited access scallop permit.* For the 2010 fishing year, such vessels are allocated 1,055 mt, which includes both the open area TAC (547 mt) and the access area TACs specified in § 648.59.

(ii) *IFQ scallop vessels with a limited access scallop permit.* Such vessels that are fishing under an IFQ scallop permit outside of the scallop DAS and Area Access programs as a limited access vessel shall be allocated 0.5 percent of the annual target TAC specified in accordance with this paragraph (a). For the 2010 fishing year, the IFQ TAC for IFQ vessels with a limited access scallop permit is 106 mt.

* * * * *

(9) *Scallop incidental catch target TAC.* The 2010 incidental catch target TAC for vessels with incidental catch scallop permits is 50,000 lb (22,680 kg).

(b) * * *

(1) Total DAS to be used in all areas other than those specified in § 648.59, shall be specified through the framework adjustment process as specified in § 648.55, using the target TAC for open areas specified in paragraph (a) of this section and estimated catch per unit effort. The total DAS for 2010 are 13,324. After accounting for applicable set-asides, the total DAS allocated the limited access fishery are 12,920.

* * * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has declared out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made an appropriate VMS declaration, as specified in § 648.10(f), does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops, and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2010
Full-time	38
Part-time	15
Occasional	3

(i) A limited access vessel that lawfully uses more open area DAS in the 2010 fishing year than specified in this section shall have the DAS used in excess of the 2010 allocation specified in this paragraph (b)(4) deducted from its 2011 open area DAS allocation.

(ii) [Reserved]

(5) * * *

(i) When the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, for each remaining complete trip in the Nantucket Lightship Access Area, a full-time vessel may fish an additional 5.8 DAS in open areas, a part-time vessel may fish an additional 4.6 DAS in open areas, and an occasional vessel may fish an additional 1.9 DAS during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). If a vessel has unused broken trip compensation trip(s), as specified in § 648.60(c), when the Nantucket Lightship Access Area closes due to the yellowtail flounder bycatch TAC, it will be issued additional DAS in proportion to the unharvested possession limit. For example, if a full-time vessel had an unused 9,000-lb (4,082-kg) Nantucket Lightship Access Area compensation trip (half of the possession limit) at the time of a Nantucket Lightship Access Area yellowtail flounder bycatch TAC closure, the vessel will be allocated 2.9 DAS (half of 5.8 DAS).

* * * * *

(g) * * *

(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(2) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS specified in paragraph (b)(1) of this section shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage is 135 DAS for the 2010 fishing year. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall be charged at a reduced rate, based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. This DAS adjustment factor may also be changed during the

fishing year if fishery conditions warrant such a change. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(2) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56, the DAS set-aside for research is 269 DAS for the 2010 fishing year.

(h) * * *

(2) *Calculation of IFQ.* The total allowable catch allocated to IFQ scallop vessels, and the TAC allocated to limited access scallop vessels issued IFQ scallop permits, as specified in paragraphs (a)(5)(i) and (ii) of this section, shall be used to determine the IFQ of each vessel issued an IFQ scallop permit. Each fishing year, the Regional Administrator shall provide the owner of a vessel issued an IFQ scallop permit issued pursuant to § 648.4(a)(2)(ii) with the scallop IFQ for the vessel for the upcoming fishing year.

* * * * *

(5) * * *

(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel not issued a limited access scallop permit may temporarily transfer its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be transferred only once during a given fishing year. Temporary IFQ transfers must be in the amount of at least 100 lb (45 kg), or the entire allocation may be transferred to another vessel. If a vessel has previously transferred a portion of its IFQ and the remaining allocation is less than 100 lb (45 kg), the remaining IFQ may be transferred in full to another vessel. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

* * * * *

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel not issued a limited access scallop permit that has fished under its IFQ in a fishing year may not transfer that vessel's IFQ to another IFQ scallop vessel in the same fishing year. IFQ can be transferred only once during a given fishing year. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2 percent of the TAC allocated to IFQ scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not transfer or receive IFQ from another IFQ scallop vessel.

(iv) * * *

(A) *Application information requirements.* An application to transfer IFQ must contain at least the following information: Transferor's name, vessel name, permit number, and official number or state registration number; transferee's name, vessel name, permit number, and official number or state registration number; total price paid for purchased IFQ; signatures of transferor and transferee; and date the form was completed. In addition, applications to temporarily transfer IFQ must indicate the amount, in pounds, of the IFQ allocation transfer, which may not be in increments of less than 100 lb (45 kg) unless that value reflects the total IFQ allocation remaining on the transferor's vessel, or the entire allocation. Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. If applicable, an application for a permanent IFQ transfer must be accompanied by verification, in writing, that the transferor either has requested cancellation of all other limited access Federal fishing permits, or has applied for a transfer of all of its limited access permits in accordance with the vessel replacement restrictions under § 648.4.

(B) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (h)(5)(iii)(C) of this section, the Regional Administrator shall issue confirmation of application approval to both parties involved in the transfer within 30 days of receipt of an application.

(C) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ for the following reasons: The application is incomplete; the transferor or transferee does not possess a valid limited access general category permit; the transferor's vessel has fished under its IFQ prior to the completion of the transfer request; the transferor's or transferee's vessel or IFQ scallop permit has been sanctioned, pursuant to a final administrative decision or settlement of an enforcement proceeding; the transfer will result in the transferee's vessel having an allocation that exceeds 2 percent of the TAC allocated to IFQ scallop vessels; the transfer will result in the transferee having a total ownership of or interest in general category scallop allocation that exceeds 5 percent of the TAC allocated to IFQ scallop vessels; or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ, the Regional Administrator shall send a letter to the applicants describing the reason(s) for the rejection. The decision, by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

* * * * *

§ 648.58 [Amended]

7. In § 648.58, paragraph (b) is removed and reserved.

8. In § 648.59, paragraphs (a)(4), (b)(5)(ii)(D), (c)(5)(ii)(D), and (d)(5)(ii)(D) are added; and paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (b)(5)(i), (b)(5)(ii)(A), (b)(5)(ii)(B), (c)(1), (c)(2), (c)(5)(i), (c)(5)(ii)(A), (c)(5)(ii)(B), (d)(1), (d)(2), (d)(5)(i), (d)(5)(ii)(A), (d)(5)(ii)(B), and (e)(4) are revised to read as follows.

§ 648.59 Sea Scallop Access Areas.

(a) * * *

(1) From March 1, 2010, through February 28, 2011, and subject to the seasonal restriction specified in paragraph (a)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

* * * * *

(3) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Delmarva Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Delmarva Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior

Delmarva Access Area trip that was terminated early, as specified in § 648.60(c). Additionally, limited access full-time scallop vessels are restricted in the number of trips that may be taken from June 15 through August 31, as specified in § 648.60(a)(3)(i)(B)(*1*). The number of trips allocated to limited access vessels in the Delmarva Access Area shall be based on the TAC for the access area, which shall be determined through the annual framework process and specified in this paragraph (a)(5)(i). The 2010 Delmarva Access Area scallop TAC for limited access scallop vessels is 5,394,485 lb (2,447 mt), after accounting for applicable set-asides and LAGC IFQ TAC.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Delmarva Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (a)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (a)(4)(ii)(B) of this section. LAGC IFQ vessels will be allocated 285,423 lb (129 mt) in fishing year 2010, which is 5 percent of the 2010 Delmarva Access Area TAC, after set-asides have been deducted. This TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (a)(4)(ii)(A) of this section, LAGC scallop vessels are allocated 714 trips to the Delmarva Access Area in fishing year 2010. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when 714 trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Delmarva Access Area, or enter the Delmarva Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallops landed by each LAGC IFQ vessel on a Delmarva Access Area trip shall count against that vessel's IFQ.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Delmarva Sea Scallop Access Area, described in paragraph (a)(2) of this section, from September 1 through October 31 of each year the Delmarva Access Area is open to scallop fishing as a Sea Scallop Access Area, except that a vessel may possess scallops while transiting pursuant to paragraph (f) of this section.

(b) * * *

(1) From March 1, 2010, through February 28, 2011, and every third fishing year thereafter (*i.e.,* March 1, 2013, through February 28, 2014) vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area provided they comply with restrictions in paragraph (b)(5)(ii)(C) of this section.

(2) From March 1, 2011, through February 28, 2013, and for every 2-yr period, based on the fishing year, after the closure described in paragraph (b)(1) of this section (*i.e.,* March 1, 2014, through February 29, 2016), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

* * * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area I Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area I Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). Closed Area I Access Area is closed to limited access vessels for the 2010 fishing year.

(ii) * * *

(A) The percentage of the Closed Area I Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (b)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (b)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Closed Area I Access Area shall be closed to LAGC IFQ vessels in the 2010 fishing year.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area I Access Area, or enter the Closed Area I Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

* * * * *

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area I Access Area trip shall count against that vessel's IFQ.

(c) * * *

(1) From March 1, 2010, through February 28, 2011, and every third fishing year thereafter, (*i.e.,* March 1, 2013, through February 28, 2014) vessels issued scallop permits may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (c)(5)(ii)(C) of this section.

(2) From March 1, 2011, through February 28, 2013, and for every 2-yr period, based on the fishing year, after the year-long closure described in paragraph (c)(1) of this section (*i.e.,* March 1, 2014, through February 29, 2016), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of

this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

* * * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Closed Area II Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Closed Area II Access Area shall be based on the TAC for the access area, which will be determined through the annual framework process and specified in this paragraph (c)(5)(i). Closed Area II Access Area is closed to limited access vessels for the 2010 fishing year.

(ii) * * *

(A) The percentage of the total Closed Area II Access Area TAC specified to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (c)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to IFQ LAGC scallop vessels as specified in paragraph (c)(5)(ii)(B) of this section. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits. The Closed Area II Access Area is closed to LAGC IFQ vessels in the 2010 fishing year.

(B) The Regional Administrator shall notify all LAGC scallop vessels of the date when the maximum number of allowed trips for the applicable fishing year have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (c)(5)(ii)(C) of this section, and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, an LAGC scallop vessel may not fish for, possess, or land sea scallops in or from the Closed Area II Access Area, or enter the Closed Area II Access Area on a declared LAGC scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

* * * * *

(D) Scallops landed by each LAGC IFQ vessel on a Closed Area II Access Area trip shall count against that vessel's IFQ.

* * * * *

(d) * * *

(1) From March 1, 2012, through February 28, 2013, and every third fishing year thereafter (*i.e.,* March 1, 2015, through February 29, 2016) vessels issued scallop permits may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section. Vessels issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided they comply with restrictions in paragraph (d)(5)(ii)(C) of this section.

(2) From March 1, 2010, through February 29, 2012, and for every 2-yr period after the year-long closure described in paragraph (d)(1) of this section (*i.e.,* March 1, 2013, through February 28, 2015), and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

* * * * *

(5) * * *

(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Nantucket Lightship Access Area, unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Access Area trip that was terminated early, as specified in § 648.60(c). The number of trips allocated to limited access vessels in the Nantucket Lightship Access Area shall be based on the TAC for the access area. The 2010 Nantucket Lightship Access Area scallop TAC for limited access scallop vessels is 5,399,985 lb (2,449 mt), after accounting for set-asides applicable and LAGC IFQ TAC to the Nantucket Lightship Access Area.

(ii) * * *

(A) The percentage of the Nantucket Lightship Access Area TAC to be allocated to LAGC IFQ scallop vessels shall be specified in this paragraph (d)(5)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (d)(5)(ii)(B) of this section. LAGC IFQ vessels are allocated 285,715 lb (130 mt) in fishing year 2010, which is 5 percent of the 2010 Nantucket Lightship Access Area TAC, after accounting for all applicable set-asides. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TAC specified in paragraph (d)(5)(ii)(A) of this section, LAGC scallop vessels are allocated 714 trips to the Nantucket Lightship Access Area in fishing year 2010. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when 714 trips have been, or are projected to be, taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). Except as provided in paragraph (d)(5)(ii)(C) of this section, an LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area, or enter the Nantucket Lightship Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

* * * * *

(D) Scallops landed by each LAGC IFQ vessel on a Nantucket Lightship Access Area trip shall count against that vessel's IFQ.

(e) * * *

(4) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area between March 1, 2010, and February 29, 2011, as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area

trip that was terminated early, as specified in § 648.60(c). Additionally, full-time scallop vessels are restricted in the number of trips that may be taken from June 15 through August 31, as specified in § 648.60(a)(3)(i)(B)(*1*). The 2010 Elephant Trunk Access Area scallop TAC for limited access scallop vessels is 10,406,727 lb (4,720 mt), after accounting for applicable set-asides and LAGC IFQ TAC.

(ii) *LAGC IFQ scallop vessels.*—(A) The percentage of the Elephant Trunk Access Area TAC to be allocated to LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC IFQ scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC IFQ vessels shall be allocated 550,621 lb (248 mt) in fishing year 2010, which is 5 percent of the 2010 Elephant Trunk Access Area TAC, after accounting for all applicable set-asides. The TAC applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit.

(B) Based on the TACs specified in paragraph (e)(4)(ii)(A) of this section, LAGC IFQ vessels are allocated a total of 1,377 trips in the Elephant Trunk Access Area in fishing year 2010. This fleet-wide trip allocation applies to both LAGC IFQ vessels and limited access vessels with LAGC IFQ permits that are fishing under the provisions of the LAGC IFQ permit. The Regional Administrator shall notify all LAGC IFQ scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be taken by providing notification in the **Federal Register**, in accordance with § 648.60(g)(4). An LAGC IFQ scallop vessel may not fish for, possess, or land sea scallops in or from the Elephant Trunk Access Area, or enter the Elephant Trunk Access Area on a declared LAGC IFQ scallop trip after the effective date published in the **Federal Register**, unless transiting pursuant to paragraph (f) of this section.

(C) Scallops landed by each LAGC IFQ vessel on an Elephant Trunk Access Area trip shall count against that vessel's IFQ.

* * * * *

9. In § 648.60, paragraphs (a)(3)(iii), (a)(5)(iv), and (c)(5)(iv) are removed and reserved; paragraph (c)(5)(ii)(A) is added; paragraph (c)(5)(ii)(B) is added and reserved; and paragraphs (a)(3)(i), (a)(3)(ii), (a)(5)(i), (c)(5)(v), (d)(1), (e)(1), and (g) are revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(3) * * *

(i) *Limited access vessel trips.* (A) Except as provided in paragraph (c) of this section, paragraphs (a)(3)(i)(B) through (E) of this section specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, or has been allocated a compensation trip pursuant to paragraph (c) of this section.

(B) *Full-time scallop vessels.* A full-time scallop vessel may take two trips in the Elephant Trunk Access Area, one trip in the Delmarva access area, and one trip in the Nantucket Lightship Access Area, subject to the following seasonal trip restrictions.

(*1*) A full-time scallop vessel may not take more than two of its three allocated scallop access area trips during the period June 15 through August 31, or may not fish for, possess, or retain more than a combined total of 36,000 lb (16,329 kg) of scallops, the equivalent of two full trip possession limits specified in § 648.60(a)(5)(i)(A), during this time period from the Delmarva and Elephant Trunk Access Areas specified in § 648.59(a) and (e). For example, a full-time vessel may declare up to two trips in the Elephant Trunk Access Area or up to one trip in the Elephant Trunk Access Area and one trip in Delmarva Access Area during June 15 through August 31. The remaining access area trips may be taken during the remainder of the fishing year, subject to the seasonal closures described under § 648.59(a)(3) and (e)(3). This restriction does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through August 31.

(*2*) [Reserved]

(C) *Part-time scallop vessels.* A part-time scallop vessel is allocated two trips that may be distributed between access areas as follows: Two trips in the Elephant Trunk Access Area; one trip in the Elephant Trunk Access Area and one trip in the Nantucket Lightship Access Area; one trip in the Elephant Trunk Access Area and one trip in the Delmarva Access Area; or one trip in the Nantucket Lightship Access Area and one trip in the Delmarva Access Area.

(D) *Occasional scallop vessels.* An occasional scallop vessel may take one trip in the Elephant Trunk Access Area, or one trip in the Nantucket Lightship Access Area, or one trip in the Delmarva Access Area.

(E) [Reserved]

(ii) *One-for-one area access trip exchanges.* If the total number of trips allocated to a vessel into all Sea Scallop Access Areas combined is more than one, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for another vessel's unutilized trips into another Sea Scallop Access Area. One-for-one exchanges may be made only between vessels with the same permit category. For example, a full-time vessel may not exchange trips with a part-time vessel, and vice versa. Vessel owners must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Trip exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Trip Exchange Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips between another vessel and the vessel for which a Confirmation of Permit History has been issued.

* * * * *

(5) *Possession and landing limits*—(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). A part-time or occassional limited access vessel that lawfully fishes for, possesses, and lands an amount of scallops greater than specified in this section in the 2010 fishing year shall

have the excess pounds landed above the possession limit specified in this paragraph (a)(5) deducted from that vessel's 2011 possession limit. A full-time vessel shall not fish for, possess, or retain more than 36,000 lb (16,329 kg) of scallops from the Elephant Trunk and Delmarva Access Areas, combined, from trips taken between June 15 and August 31. This landing restriction does not include the additional possession allowance to defray the cost of carrying an observer as specified in § 648.60(d) that occur during observed trips between June 15 through August 31. No vessel declared into the Access Areas as described in § 648.59(a) through (e) may possess more than 50 bu (17.62 hL) of in-shell scallops outside of the Access Areas described in § 648.59(a) through (e).

Fishing year	Permit category possession limit		
	Full-time	Part-time	Occasional
2010	18,000 lb (8,165 kg)	14,400 lb (6,532 kg)	6,000 lb (2,722 kg)

* * * * *

(c) * * *

(5) * * *

(ii) * * *

(A) Pursuant to § 648.60(a)(3)(i)(B)(*1*), a full-time vessel may not take a compensation trip based on a single or multiple terminated trip(s) during the period June 15 through August 31 if the compensation trip would allow a vessel to land more than 36,000 lb (16,329 kg), the equivalent of two full access area trips, during the period June 15 through August 31, in the Elephant Trunk Access Area and Delmarva Access Area combined. For example, a vessel that terminated a trip in the Delmarva Access Area on June 1, 2010, and intends to declare two full trips in the Elephant Trunk Access Area access area from June 15 through August 31, must wait to fish its compensation trip in the Delmarva Access Area until November 1, 2010.

(B) [Reserved]

* * * * *

(v) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates an Elephant Trunk Access Area trip on December 29, 2010, must declare that it is beginning its additional compensation trip during the first 60 days that the Elephant Trunk Access Area is open (March 1, 2011, through April 29, 2011). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area II trip on December 10, 2009, may not carry its additional compensation trip into the 2010 fishing year because Closed Area II is not open during the 2010 fishing year, and must complete any compensation trip by January 31, 2010.

(d) *Possession limit to defray costs of observers*—(1) *Observer set-aside limits by area*—(i) *Nantucket Lightship Access Area.* For the 2010 fishing year, the observer set-aside for the Nantucket Lightship Access Area is 58,910 lb (27 mt).

(ii) [Reserved]

(iii) *Elephant Trunk Access Area.* For the 2010 fishing year, the observer set-aside for the Elephant Trunk Access Area is 113,530 lb (52 mt).

(iv) *Delmarva Access Area.* For the 2010 fishing year, the observer set-aside for the Delmarva Access Area is 58,850 lb (27 mt).

* * * * *

(e) * * *

(1) Research set-aside limits and number of trips by area —(i) *Nantucket Lightship Access Area.* For the 2010 fishing year, the research set-aside for the Nantucket Lightship Access Area is 117,820 lb (53 mt).

(ii) [Reserved]

(iii) *Elephant Trunk Access Area.* For the 2010 fishing year, the research set-aside for the Elephant Trunk Access Area is 277,060 lb (126 mt).

(iv) *Delmarva Access Area.* For the 2010 fishing year, the research set-aside for the Delmarva Access Area is 117,700 lb (53 mt).

* * * * *

(g) *Limited Access General Category Vessels.* (1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(a)(4), (b)(4), (c)(4), (d)(4), and (e)(3), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued both a NE Multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

(2) *Gear restrictions.* An LAGC IFQ scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) must fish with dredge gear only. The combined dredge width in use by, or in possession on board of, an LAGC scallop vessel fishing in the Access Areas described in § 648.59(a) through (e) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *LAGC IFQ Access Area Trips.* An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been or are projected to be taken. Upon a determination from the Regional Administrator that the total number of LAGC IFQ trips in a specified Access Area have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act. Once this determination has been made, an LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the specified Access Area after the effective date of the

notification published in the **Federal Register**.

(i) [Reserved]

(ii) [Reserved]

(iii) [Reserved]

(iv) [Reserved]

(4) *Possession Limits.* (i) *Scallops.* A vessel issued a NE multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS and that has not enrolled in the LAGC Access Area fishery, is prohibited from possessing scallops. An LAGC scallop vessel authorized to fish in the Access Areas specified in § 648.59(a) through (e) may possess scallops up to the possession limit specified in § 648.52(a).

(ii) *Other species.* Unless issued an LAGC scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Access Areas specified in § 648.59(a) through (e) is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8).

(5) *Number of trips.* An LAGC IFQ scallop vessel may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(a) through (e) after the effective date of the notification published in the **Federal Register,** stating that the total number of trips specified in § 648.59(a)(3)(ii), (b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by LAGC IFQ scallop vessels.

10. In § 648.62, paragraph (b)(1) is revised to read as follows.

§ 648.62 Northern Gulf of Maine (NGOM) scallop management area.

* * * * *

(b) * * *

(1) *NGOM TAC.* The TAC for the NGOM is 70,000 lb (31.8 mt) for the 2010 fishing year.

* * * * *

[FR Doc. 2010–9728 Filed 4–26–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907211158–91159–01]

RIN 0648–AY04

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2010

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2010 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Comments must be received by 5 p.m. local time, on May 27, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY04, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- Fax: (978) 281–9135, Attn: Comments on 2010 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures, 0648–AY04
- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Summer Flounder, Scup, and Black Sea Bass Recreational Measures, 0648–AY04."

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the recreational management measures document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the recreational management measures are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (Paralichthys dentatus) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (Stenotomus chrysops) and black sea bass (Centropristis striata) in U.S. waters of the Atlantic Ocean from 35° E. 13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission, the Council, state marine fishery agency representatives from MA to NC, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits these measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee, and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council then reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP before ultimately implementing measures for Federal waters.

Quota specifications for the 2010 summer flounder, scup, and black sea bass fisheries were published on December 22, 2009 (74 FR 67978), and became effective January 1, 2010. The black sea bass specifications (i.e., recreational harvest limit and commercial quota) were increased by emergency rule on February 10, 2010 (75 FR 6586). Based on the specifications, the 2010 coastwide recreational harvest limits are 8,586,440 lb (3,896 mt) for summer flounder, 3,011,074 lb (1,366 mt) for scup, and 1,830,390 lb (830 mt) for black sea bass. The specification rules did not establish recreational measures, in large part because a substantial portion of 2009 recreational catch data was not yet available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed hereafter are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person. All landings projection data are based on data from the Marine Recreational Fisheries Statistics Survey (MRFSS) Waves 1–4 (January-August) unless otherwise indicated.

Summer Flounder

Recreational landings for 2009 were estimated to have been 6.40 million lb (2,903 mt) and were 12 percent below the 2009 recreational harvest limit of 7.16 million lb (2,248 mt). The 2010 coastwide harvest limit is 8.59 million lb (3,896 mt), a 20–percent increase from the 2009 harvest limit. The Council and Commission have recommended the use of conservation equivalency to manage the 2010 summer flounder recreational fishery.

NMFS implemented Framework Adjustment 2 to the FMP (Framework Adjustment 2) on July 29, 2001 (66 FR 36208), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit provided by the Commission, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit, if implemented by all of the states.

The Council and Board recommend that either on an annual basis state-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

If conservation equivalency is recommended, and following confirmation that the proposed state measures developed through the Commission's technical and policy review processes achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ would then be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee (Technical Committee), or that submits measures that would not exceed the harvest limit for that state. The precautionary default measures are defined as the set of measures that would not exceed the harvest limit for any state on a coastwide basis.

In previous years when conservation equivalency has been jointly recommended by the Council and Commission, NMFS has provided a description of the management targets, technical, and other Commission-imposed requirements for states to follow when designing state-specific equivalent measures. The process that results in selection of appropriate data and analytic techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures is wholly a function of the Commission and its individual member states. Inclusion of such descriptions may add confusion and imply that the development, evaluation, and recommendation process is part of the combined Council and NMFS responsibilities of the conservation equivalency system. Individuals seeking information regarding the specific state measure development process or the Commission process should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once states select their final 2010 summer flounder management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further independent review and evaluation of the state-submitted proposals, ultimately notifying NMFS as to which individual state proposals have been approved or disapproved. NMFS has no input or authority in the state or Commission management measure development and review process. However, NMFS retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures, and will publish its

determination as a final rule in the **Federal Register** to establish the 2010 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or whose proposals are disapproved by the Commission, will be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b).

The precautionary default measures recommended by the Council and Board during their joint December 2009 meeting are for a 21.5–inch (54.61–cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2010.

As described above, for each fishing year, NMFS implements either coastwide measures or conservation equivalent measures at the final rule stage. The coastwide measures recommended by the Council and Board for 2010 are a 19.5–inch (49.53–cm) minimum fish size, a possession limit of two fish, and an open season from May 1 to September 30, 2010.

In this action, NMFS proposes to implement conservation equivalency with a precautionary default backstop, as previously outlined, for states that either fail to submit conservation equivalent measures or whose measures are not approved by the Commission. NMFS proposes the non-preferred alternative of coastwide measures, as previously described, for use if conservation equivalency is not approved in the final rule. The coastwide measures would be waived if conservation equivalency is approved in the final rule.

Scup

The 2010 scup recreational harvest limit is 3.01 million lb (1,366 mt), a 16–percent increase from the 2009 recreational harvest limit of 2.59 million lb (1,175 mt). Recreational landings in 2009 are estimated to have been 4.01 million lb (1,819 mt), exceeding the recreational harvest limit by 55 percent. Because of this overage, recreational landings must be reduced by 30 percent from 2009 levels for the 2010 fishery to stay within the established recreational harvest limit.

However, the Council initially recommended measures that would reduce 2010 landings by 35 percent to remain within the 2010 recreational harvest limit based on a preliminary landings estimate that was slightly higher. The Council's recommendation was made in early December and, subsequent to the Council's recommendation, and subsequent additional analysis of the 2009 recreational landings has been conducted by a technical working group at the request of the Council, Commission, and NMFS. The working group was tasked to re-examine a specific situation regarding anomalies from the MRFSS Wave 4 Massachusetts party vessel sector estimate. The analysis conducted by this working group resulted in a revised Wave 4 estimate that changed the level of reduction from 2009 landing levels required for 2010 from 35 to 30 percent. As a result, the Council's preferred alternative for an 11.0–inch (27.94–cm) minimum fish size, a 10–fish per person possession limit, and open fishing seasons of January 1–February 28 and June 12–September 26 is more restrictive than necessary to remain within the 2010 recreational harvest limit.

The Council also considered an alternative that is projected to provide the revised 30–percent reduction from 2009 landings in 2010: A 10.5–inch (26.67–cm) minimum fish size; a 10–fish per person possession limit; and an open season of June 6–September 26. Consistent with the revised catch analysis for 2009, NMFS proposes to implement the Council's non-preferred suite of measures that achieve the 30–precent reduction in 2010 landings from 2009 levels for Federal waters in the 2010 scup recreational fishery: A 10.5–inch (26.67–cm) minimum fish size; a 10–fish per person possession limit; and an open season of June 6–September 26. NMFS acknowledges that the Commission meeting has indicated its intent to continue managing the recreational scup fishery through a Commission-based conservation equivalency program that has no comparable measures in the Federal FMP. Preliminary information presented during the February 2010 Commission indicated that the Commission's 2010 scup recreational measures for state waters may differ from the measures of this proposed rule. Very little of the scup recreational harvest comes from the Federal waters of the EEZ. The total scup recreational harvest from Federal waters for 2008 was approximately 4 percent.

Black Sea Bass

The process for 2010 black sea bass recreational management measures has been complicated by many unusual, and at times, unforeseeable events. Recreational landings in 2009 were estimated to have been between 1.94 and 3.31 million lb (882 and 1,501 mt), based on evaluation of actual landings data through August and projections of final 2009 landings. Either scenario exceeds the 2009 recreational harvest limit of 1.14 million lb (517 mt). NMFS implemented an emergency rule (74 FR 51092; October 5, 2009) to close Federal waters of the EEZ to black sea bass recreational fishing for a period of 180 days, based on recreational landings data through August 2009, because of the magnitude of the overage. When the closure was implemented in October 2009, the 2010 recreational harvest limit had not yet been finalized, development of recreational management measures had not yet begun, and data on final recreational landings for 2009 were incomplete. While issuing the closure, NMFS anticipated that the magnitude of the 2009 overage was such that a reduction in landings from 2009 levels in 2010 would be likely. Thus, the fishery was closed for 180 days, as opposed to implementing a closure through the end of the fishing year, December 31, 2009. It was expected that in the interim between the start of the closure on October 5, 2009, and the end of the 180-day closure period, the typical process for establishing both the 2010 recreational harvest limit and recreational management measures would occur. However, the process has been atypical, for the following reasons.

In December 2009, the Council and Commission developed recommended management measures for the 2010 recreational fishery. The measures were designed to achieve a 66–percent reduction in landings from projected 2009 levels, which was consistent with the black sea bass recreational harvest limit of 1,137,810 lb (516 mt) that had been adopted by the Council and Commission in August 2009. The 66–percent reduction was calculated using 2009 landings data from Waves 1–4 (January-August), and projected landings for Waves 5 and 6 (September-December), as data for Waves 5 and 6 were not available at the time the Council and Commission met.

On December 22, 2009, NMFS published a final rule implementing the specifications for the 2010 fishing year. These specifications, effective January 1, 2010, included total allowable landings (TAL) for black sea bass of 2.3 million lb (1,043 mt), of which 1,137,810 lb (516 mt) was allocated to the recreational fishery as the recreational harvest limit. This TAL and recreational harvest limit was consistent with the August 2009 recommendations of the Council and Commission.

In early January 2010, the Council's Scientific and Statistical Committee (SSC) convened to reconsider its previous recommendations regarding the Acceptable Biological Catch (ABC) for black sea bass for the 2010 fishing year. The SSC concluded that the ABC for black sea bass could be increased from 2.71 million lb (1,229 mt) to 4.5 million lb (2,041 mt), which was consistent with catch levels established for 2008.

In response, on January 15, 2010, the Council submitted a letter to NMFS requesting that the agency take emergency action to increase the black sea bass TAL for 2010 consistent with the revised ABC. The letter requested that NMFS increase both the 2010 commercial quota and recreational harvest limit for black sea bass.

On February 10, 2010, in response to the Council's request, NMFS published an emergency rule to increase the 2010 black sea bass TAL from 2.3 million lb (1,043 mt) to 3.7 million lb (1,678 mt), and to increase the recreational harvest limit to 1,830,390 lb (830 mt).

In mid-February 2010, the Commission and Council met separately to reconsider the recreational fishery management measures developed in December 2009. The measures adopted in December 2009 were designed to achieve a 66–percent reduction in black sea bass landings relative to 2009, but with the increased recreational harvest limit implemented in the emergency rule, only a 44–percent reduction appeared necessary. Both the Council and Commission retained the status quo minimum fish size of 12.5 inches (31.75 cm) and 25–fish bag limit, but the two groups adopted different seasons. The Commission adopted a single season from May 22–September 12, and the Council recommended a split season from May 22–August 8 and September 4–October 4. Both sets of measures are projected to achieve a 44–percent reduction in landings.

Information on final 2009 black sea bass recreational total landings are not yet available. However, since the Council and Commission reconsidered 2010 black sea bass recreational management measures based on a 44–percent reduction in landings, the preliminary 2009 MRFSS Wave 6 (November-December) data have become available. The EEZ was closed for the entire 2009 Wave 6 period, and landings from 2009 Wave 6 are 75 percent lower than 2008 Wave 6 landings. The EEZ was also closed from October 5–31, 2009, during Wave 5 (September-October), but data on Wave 5 are not yet available.

The projection methodology utilized by both the Council and Commission that indicated a 44–percent reduction in landings was necessary used 2008 Wave 6 data and assumed that the EEZ closure had no effect on landings during the October 5–December 31 period (i.e., partial Wave 5 and all of Wave 6). This assumption was reasonable at the time, given that: (1) The Council and Commission anticipated that some amount of landings would continue to occur in state waters that remained open; and (2) preliminary Wave 5 data were expected to be available in mid-December to provide a more informed assessment of the closure impacts. However, issues related to the adequacy of survey sample size for the 2009 Wave 5 sampling period required additional analyses to be conducted by the NMFS Office of Science and Technology to ensure suitability of the 2009 Wave 5 estimate. Final data for Wave 5 are expected in mid-April 2010.

NMFS has conducted additional analysis of the 2009 projected landings, making use of the preliminary 2009 Wave 6 data and modifying the assumptions regarding black sea bass landings during the October 5–31, 2009, EEZ closure timeframe. It is evident from this analysis that the 2009 black sea bass landings are lower than previously projected; however, in the multiple projection scenarios conducted, the 2009 recreational harvest limit was still exceeded and a reduction in 2010 landings still appears to be necessary. These alternative projections suggest that the percent reduction in landings from 2009 levels is less than the 44 percent in the Council and Commission projection analysis.

To ensure that final 2010 black sea bass recreational management measures are promulgated in a timely fashion and make use of the best available information regarding 2009 landings, NMFS is proposing the following course of concurrent actions:

1. NMFS has extended the existing recreational fishery closure in the EEZ until 11:59 p.m., May 21, 2010. This will ensure that the 2010 recreational fishery will begin no earlier than the Council and Commission preferred start date of May 22, 2010.

2. NMFS will analyze 2009 Wave 5 and final 2009 black sea bass recreational landings data as soon as they are available. These data are expected in mid-April. Using these data will provide the best information possible on the amount of reduction required in the 2010 fishery.

3. NMFS proposes to implement the Council and Commission-recommended minimum fish size of 12.0 inches (31.75 cm), possession limit of 25 fish per person, and season starting date of May 22, 2010. The final season length will be determined by the updated analysis of final 2009 landings data and implemented in the final rule for this action, following analysis and public comment.

It is not practicable to hold this proposed rule for 2010 black sea bass recreational management measures until after final 2009 landings data are available. In regards to season length, NMFS will consider the amount of potential liberalization possible based on the final 2009 landings data and will, to the extent practicable, extend the fishing season from May 22 onward. Under the Council's current preferred alternative, a 44–percent reduction in landings is provided by a May 22–August 8 and September 4–October 4 fishing season; therefore, liberalization could involve the addition of days from August 9–September 3 and/or from October 5 onward, as permitted by any revision to the required reduction in 2010 landings resulting from final 2009 landings data analysis. Through this proposed rule, NMFS is requesting specific comment from the Council, Commission, and interested public on how to best extend the fishing season, should the final analysis warrant that. The full extent of potential season length will not be known until final 2009 landings data can be analyzed. NMFS expects that a final rule to implement the 2010 black sea bass recreational season will be issued and effective well in advance of the Commission's recommended August 8, 2010, mid-season closure.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** of this proposed rule. A summary of the analysis follows. A copy of the complete

IRFA is available from the Council (see **ADDRESSES**).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. The proposed action could affect any recreational angler who fishes for summer flounder, scup, or black sea bass in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder, scup, and/or black sea bass. However, the only regulated entities affected by this action are party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass, and so the IRFA focuses upon the expected impacts on this segment of the affected public. These vessels are all considered small entities for the purposes of the RFA, i.e., businesses in the recreational fishery with gross revenues of up to $6.5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although fishing opportunities by individual recreational anglers may be impacted by this action, they are not considered small entities under the RFA.

The Council estimated that the proposed measures could affect any of the 948 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2009, the most recent year for which complete permit data are available. However, only 328 vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2008, the most recent year for which complete fishing vessel trip reports (i.e., logbooks) are available.

In the IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as implementation of the following: (1) For summer flounder, coastwide measures of a 20–inch (50.8–cm) minimum fish size, a 2–fish possession limit, and a season from May 1 through September 30; (2) for scup, a 10.5–inch (26.67–cm) minimum fish size, a 15–fish possession limit, and open seasons of January 1 through February 28, and October 1 through October 31; and (3) for black sea bass, a 12–inch (30.48–cm) minimum size, a 25–fish possession limit, and an open season of January 1 through December 31.

The impacts of the proposed action on small entities (i.e., federally permitted party/charter vessels in each state in the Northeast region) were analyzed, assessing potential changes in gross revenues for all 24 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost and revenue information is not available for charter/party vessels at this time. Without reliable cost and revenue data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed, due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process. Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, qualitative analyses were utilized. Management measures proposed under the summer flounder conservation equivalency alternative (Summer Flounder Alternative 1) have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with various alternatives proposed for scup and black sea bass. Since conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals, it is likely that the measures developed under this alternative, when considered in combination with the measures proposed for scup and black sea bass, would have fewer overall adverse effects than any of the other combinations that were analyzed.

Impacts for other combinations of alternatives were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2009 that would have been affected by the proposed 2010 management measures. All 2009 party/charter fishing trips that would have been constrained by the proposed 2010 measures in each state were considered to be affected trips. MRFSS data indicate that anglers took 34.66 million fishing trips in 2009 in the Northeastern U.S., and that party/charter anglers accounted for 1.41 million of the angler fishing trips, private/rental boat trips accounted for 17.34 million angler fishing trips, and shore trips accounted for 15.91 million recreational angler fishing trips.

There is very little empirical evidence available to estimate how the party/charter vessel anglers might be affected by the proposed fishing regulations. If the proposed measures discourage trip-taking behavior among some of the affected anglers, economic losses may accrue to the party/charter vessel industry in the form of reduced access fees. On the other hand, if the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected by this action. In an attempt to estimate the potential changes in gross revenues to the party/charter vessel industry in each state, two hypothetical scenarios were considered: A 25–percent reduction and a 50–percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast (ME through NC) in 2010.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2010, under the two hypothetical scenarios, by the estimated average access fee of $62.38 paid by party/charter anglers in the Northeast in 2009. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2009 in each state (according to homeport state in the Northeast Region Permit Database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2010. The analysis assumed that angler effort and catch rates in 2010 will be similar to 2009.

The Council noted that this method is likely to overestimate the potential revenue losses that would result from implementation of the proposed measures in these three fisheries for several reasons. First, the analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Also, some anglers may engage in catch and release fishing and/or target other species. It was not possible to estimate the sensitivity of anglers to specific management measures. Second, the universe of party/charter vessels that participate in the fisheries is likely to be even larger than presented in these analyses, as party/charter vessels that do not possess a Federal summer flounder, scup, or black sea bass permit because they fish only in state waters are not represented in the analyses. Considering the large proportion of landings from state waters (e.g., more than 97 percent of summer flounder and 96 percent of scup landings in 2008, respectively), it

is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, economic losses are estimated under two hypothetical scenarios: (1) A 25–percent; and (2) a 50–percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast in 2010. Reductions in fishing effort of this magnitude in 2010 are not likely to occur, given the fact that the proposed measures do not prohibit anglers from keeping at least some of the fish they catch, or the fact that there are alternative species to harvest. Again, it is likely that at least some of the potentially affected anglers would not reduce their effort when faced with the proposed landings restrictions, thereby contributing to the potential overestimation of potential impacts for 2010.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 8.59 million lb (3,896 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier, upon confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

Because states have yet to develop specific 2010 management measures, it is not yet possible to analyze the potential impacts of Summer Flounder Alternative 1, which would implement conservation equivalency. However, conservation equivalent recreational management measures allow each state to develop specific summer flounder recreational measures, which would allow the fishery to operate in each state during critical fishing periods while still achieving the conservation objectives. This should help mitigate potential adverse economic impacts. Therefore, the Council concluded in its analysis that Summer Flounder Alternative 1 would likely have the lowest potential adverse impact of the alternatives considered for the 2010 summer flounder recreational fishery.

Because states have a choice of developing specific measures in the Commission's conservation equivalency process, it is expected that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the more restrictive proposed precautionary default measures (i.e., 21.5–inch (54.61–cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2010). The precautionary default is a sub-alternative that may be implemented under specific conditions, as outlined in the preamble of this rule. As such, the Council conducted analysis of the potential impact of implementing precautionary default measures in 2010. Under the precautionary default measures, impacted trips are defined as trips taken in 2009 that landed at least one summer flounder smaller than 21.5 inches (54.61 cm), landed more than two summer flounder, or landed summer flounder during closed seasons. The analysis concluded that implementation of precautionary default measures could affect 0.63 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

The impacts of Summer Flounder Alternative 2 for coastwide measures, which would be implemented by NMFS if conservation equivalency is disapproved in the final rule, i.e., a 19.5–inch (49.53–cm), minimum fish size, a two-fish possession limit, and a fishing season from May 1 through September 30, were evaluated in the Council's analysis. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2009 that landed at least one summer flounder smaller than 19.5 inches (49.53 cm), that landed more than two summer flounder or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 0.56 percent of the party/charter vessel trips in the Northeast.

Continuation of the summer flounder coastwide management measures (i.e., a 19.5–inch (49.53–cm) minimum fish size, two-fish possession limit, and a May 1 through September 1 fishing season) is expected to constrain 2010 landings to the recreational harvest limit; however, continuation of those measures would be more restrictive than necessary under the summer flounder rebuilding plan requirement established 2010 recreational harvest limit.

Impacts of Scup Alternatives

The proposed action for the scup recreational fishery would implement Federal coastwide management measures throughout the EEZ. As described earlier in the preamble, a conservation equivalent program is utilized by the Commission to manage state waters. Federally permitted charter/party permit holders and recreational vessels fishing for scup in the EEZ then would be subject to the recreational fishing measures implemented by NMFS; charter/party vessels participating solely in state waters without a Federal permit would be subject to the provisions adopted by the Commission; federally permitted vessels participating in both state and Federal waters would be subject to the more restrictive of the two measures implemented to manage the 2010 scup recreational fishery.

Scup Alternative 1 (an 11.0–inch (27.94–cm) minimum fish size, a 10–fish per person possession limit, and open seasons of January 1 through February 29 and June 12 through September 26) is projected to reduce scup landings in 2010 by 35 percent from 2009 levels, assuming comparable measures in both state and Federal waters. As explained elsewhere in the preamble, state and Federal measures are expected to differ; however, very little of the scup recreational harvest occurs in Federal waters of the EEZ. Affected trips under Scup Alternative 1 were defined as trips taken in 2009 that landed at least one scup smaller than 11.0 inches (27.94 cm), landed more than 10 scup, or landed scup during the closed seasons (March 1–June 12 and September 27–December 31). Analysis concluded that 2.15 percent of federally permitted party/charter vessel trips could be affected by this alternative. This alternative is more restrictive than is required for 2010.

The non-preferred scup coastwide alternative (Scup Alternative–2; 10.5–inch (26.67–cm) minimum fish size, 15–fish per person possession limit, and open seasons of January 1 through February 29 and October 1 through October 15) is not projected to achieve the necessary conservation required for the 2010 scup recreational fishery. Thus, Scup Alternative 2 is inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act.

Scup Alternative 3 measures (a 10.5–inch minimum fish size, 10 fish per person possession limit, and fishing seasons June 6–September 26) are expected to constrain landings to the 2010 recreational harvest limit if comparable measures are utilized in state waters. However, as noted elsewhere in the preamble, the Commission is likely to implement more liberal measures in state waters that may result in the 2010 recreational

harvest limit being exceeded, regardless of what measures are taken for Federal waters–including closure of Federal waters of the EEZ. Affected trips under Scup Alternative 3 were defined as trips taken in 2009 that landed at least one scup smaller than 10.5 inches, landed more than 7 but less than 10 scup, or landed scup in the closed seasons. The analysis concluded that this alternative could impact 2.24 percent of Federally permitted party/charter vessel trips in 2009, if implemented.

Impacts of Black Sea Bass Alternatives

The proposed action for the black sea bass recreational fishery would limit coastwide catch to 1.83 million lb (830 mt) by imposing coastwide Federal measures throughout the EEZ. The impact of Black Sea Bass Alternative 1 (a 12.5–inch (31.75–cm) minimum fish size, a 25–fish per person possession limit, and an open season of June 1–30 and September 1–30), is projected to reduce black sea bass landings by 66 percent in 2010 from 2009 levels. This is more restrictive than necessary, but would likely ensure that landings remain below the 2010 recreational harvest limit. Impacted trips were defined as trips taken in 2009 that landed at least one black sea bass smaller than 12.5 inches (31.75 cm), landed more than 25 black sea bass, or landed black sea bass during the proposed closed seasons (January 1–May 31 and October 1–December 21). Analysis concluded that 6.44 percent of federally permitted party/charter vessel trips could be affected by this alternative.

The non-preferred black sea bass coastwide alternative for status quo (Black Sea Bass Alternative 2; 12.5–inch (31.75–cm) minimum fish size, 25–fish per person possession limit, and no closed season) is not expected to constrain 2010 landings to the recreational harvest limit; therefore, continuation of those measures in Federal waters would be inconsistent with the FMP and the Magnuson-Stevens Act.

Black Sea Bass Alternative 3 (a 12.5–inch (31.75–cm) minimum fish size, 10–fish per person possession limit, and May 22–September 12 fishing season), would reduce landings by 44 percent. Implementation of this alternative would result in a greater reduction than is required for the 2010 recreational black sea bass fishery.

Black Sea Bass Alternative 4, (a 12.5–inch (31.75–cm) minimum fish size, 25–fish per person possession limit, and May 22–August 8 and September 4–October 4 fishing seasons), is expected to reduce landings by 44 percent from 2009 levels. Affected trips are defined as trips taken in 2009 that landed one black sea bass smaller than 12.5 inches, landed more than 25 black sea bass, or landed black sea bass during closed seasons. Analysis concluded that 3.88 percent of Northeast party/charter trips could be affected by the measures of Black Sea Bass Alternative 4. The Council concluded that the different seasons and possession limits proposed under Alternative 4 provide a lesser negative impact than do the measures of Alternative 3, which is also projected to achieve the currently required 44–percent reduction in landings.

NMFS may consider further liberalization of the 2010 black sea bass fishing season utilized in concert with a 12.5–inch (31.75–cm) minimum fish size, 25–fish per person possession limit if analysis of final 2009 data indicate that action is justified. If such liberalization occurs with the addition of fishing days in either the August 9–September 3 closed season or after October 5, the impact to party/charter vessels would be further reduced.

Potential 2010 Regional Economic Impact Analysis Summary

Regionally, projected federally permitted party/charter revenue losses in 2010 range from $6.4 million to $21.9 million in sales, $2.1 to $7.3 million in income, and between 128 and 437 jobs, if a 25–percent reduction in the number of affected trips occurs. The estimated losses are approximately twice as high if a 50–percent reduction in affected trips is assumed to occur. Potential revenue losses in 2010 could differ for federally permitted party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. All 24 potential combinations of management alternatives for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in all of the Northeast coastal states. Although potential losses were estimated for party/charter vessels operating out of ME and NH, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary across the 24 combinations of alternatives. For example, in NY, average losses are predicted to range from a high of $5,990 to a low of $1,474 per vessel, assuming a 25–percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 24 combinations of alternatives were generally highest in NC followed by MA, NY, MD, NJ, RI, VA, CT then DE. Across states, average gross projected revenue losses range from a low of $399 per vessel in DE to $44,434 in NC.

Summary

The 2010 recreational harvest limits for summer flounder, scup, and black sea bass are 20-, 16-, and 60–percent higher, respectively, than the recreational harvest limits for 2009. However, current projection estimates of 2009 recreational landings indicate that scup will exceed the 2009 recreational harvest limit by 80 percent, and black sea bass landings will exceed the recreational harvest limit by 190 percent, based on data through MRFSS Waves 1–4. No overages are projected in the 2009 summer flounder recreational fishery.

As a result, the proposed recreational management measures for summer flounder in the Commission's conservation equivalency are likely to be similar or slightly more liberal for 2010 (i.e., either smaller minimum fish size, higher possession limits, and/or longer fishing seasons) under the proposed conservation equivalency system (Summer Flounder Alternative 1) than those in place in 2009. If the Commission approves state-developed measures as conservational equivalent to the coastwide measures, measures for Federal waters adopted by waiving § 648.4(b) may also be similar or slightly liberal for 2010 if NMFS approves conservation equivalency in the final rule.

The proposed measures for both scup and black sea bass are more restrictive than the measures in place for 2009.

The proposed management measures, or management system in the case of conservation equivalency, were chosen because they allow for the maximum level of recreational landings, while allowing the NMFS to achieve the objectives of the FMP. Summer flounder conservation equivalency permits states to implement management measures tailored, to some degree, to meet the needs of their individual recreational fishery participants, provided the level of reduction is equal to the overall reduction needed coastwide, consistent with Framework Adjustment 2 to the FMP.

The proposed measures for scup are expected to achieve the required reduction in 2010 landings from 2009 levels, provided that comparable state measures are implemented through the Commission. Because it appears likely that the 2010 Commission measures may differ from Federal measures, NMFS will consider public comment

and more closely examine the Commission measures to determine the likelihood that overfishing could occur as a result of the combined proposed Federal and Commission measures before publishing a final rule. The majority of scup recreational harvest occurs within state waters.

The proposed black sea bass management measures were selected because they are the only set of measures proposed by the Council that are projected permit the maximum amount of landings under the 2010 recreational harvest limit. As stated elsewhere in the preamble, NMFS will consider final 2009 landings data and public comment, and may extend the 2010 black sea bass fishing season, consistent with measures designed to achieve the 2010 recreational harvest limit, in the final rule.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 22, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.102 is revised to read as follows:

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from May 1 through September 30. This time period may be adjusted pursuant to the procedures in § 648.100.

3. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19.5 inch (49.53 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

4. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

* * * * *

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. ***

* * * * *

5. In § 648.107, paragraph (a) introductory text and paragraph (b) are revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2010 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season — May 1 through September 30; minimum size–21.5 inches (54.61 cm); and possession limit–two fish.

6. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Season and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a) (6), and fishermen subject to the possession limit specified in § 648.125(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.120.

7. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

§ 648.122 Possession limit.

(a) No person shall possess more than 10 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.***

* * * * *

8. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from May 22 through August 8 and September 4 through October 4, unless this time period is adjusted pursuant to the procedures in § 648.140.

[FR Doc. 2010–9729 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 80

Tuesday, April 27, 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

Office of the Secretary

USDA Reassigns Domestic Cane Sugar Allotments and Increases the Fiscal Year 2010 Raw Sugar Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Secretary of Agriculture today announced a reassignment of surplus sugar under domestic cane sugar allotments of 200,000 short tons raw value (STRV) to imports, and increased the fiscal year (FY) 2010 raw sugar tariff-rate quota (TRQ) by the same amount.

DATES: *Effective:* April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Angel F. Gonzalez, Import Policies and Export Reporting Division, Foreign Agricultural Service, AgStop 1021, U.S. Department of Agriculture, Washington, DC 20250–1021; or by telephone (202) 720–2916; or by fax to (202) 720–0876; or by e-mail to *angel.f.gonzalez@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: USDA's Commodity Credit Corporation (CCC) today announced the reassignment of projected surplus cane sugar marketing allotments and allocations under the FY 2010 (October 1, 2009–September 30, 2010) Sugar Marketing Allotment Program. The FY 2010 cane sector allotment and cane state allotments are larger than can be fulfilled by domestically-produced cane sugar. This surplus was reassigned to raw sugar imports as required by law. Upon review of the domestic sugarcane processors' sugar marketing allocations relative to their FY 2010 expected raw sugar supplies, CCC determined that all sugarcane processors had surplus allocation. Therefore, all sugarcane states' sugar marketing allotments are reduced with this reassignment. The new cane state allotments are Florida, 1,983,802 STRV; Louisiana, 1,581,306 STRV; Texas, 178,366 STRV; and Hawaii, 272,417 STRV. The FY 2010 sugar marketing allotment program will not prevent any domestic sugarcane processors from marketing all of their FY 2010 sugar supply.

On September 25, 2009, USDA established the FY 2010 TRQ for raw cane sugar at 1,231,497 STRV (1,117,195 metric tons raw value, MTRV*), the minimum to which the United States is committed under the World Trade Organization Uruguay Round Agreements. Pursuant to Additional U.S. Note 5 to Chapter 17 of the U.S. Harmonized Tariff Schedule (HTS) and Section 359k of the Agricultural Adjustment Act of 1938, as amended, the Secretary of Agriculture today increased the quantity of raw cane sugar imports of the HTS subject to the lower tier of duties during FY 2010 by 200,000 STRV (181,437 MRTV). With this increase, the overall FY 2010 raw sugar TRQ is now 1,431,497 STRV (1,298,632 MTRV). Raw cane sugar under this quota must be accompanied by a certificate for quota eligibility and may be entered under subheading 1701.11.10 of the HTS until September 30, 2010. The Office of the U.S. Trade Representative will allocate this increase among supplying countries and customs areas.

This action is being taken after a determination that additional supplies of raw cane sugar are required in the U.S. market. USDA will closely monitor stocks, consumption, imports and all sugar market and program variables on an ongoing basis, and may make further program adjustments during FY 2010 if needed.

* Conversion factor: 1 metric ton = 1.10231125 short tons.

Dated: April 19, 2010.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2010–9730 Filed 4–26–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2010

Announcement Type: Initial Notice inviting applications from qualified applicants for Fiscal Year 2010.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.433.

SUMMARY: The Rural Housing Service (RHS), an agency within Rural Development, announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private non-profit organizations, which may include, but not be limited to, faith-based and community organizations, and other eligible entities grant funds to assist very low- and low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists rental property owners and cooperative housing complexes in repairing and rehabilitating their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with RHS regulations found in 7 CFR part 1944, subpart N, which require RHS to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: If submitting a paper application the closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time for each Rural Development State Office on June 28, 2010. If submitting the application in electronic format, the deadline for receipt is 5 p.m. Eastern Standard Time on [same date as paper application]. The application closing deadline is firm as to *date and hour.* RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and

postage due applications will not be accepted.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0115.

Program Administration

I. Funding Opportunities Description

The funding instrument for the HPG Program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the Rural Development State Office to determine the allocation.

II. Award Information

For Fiscal Year 2010, $10,146,815.03 is available for the HPG Program. The total includes $746,815.03 in carryover funds. Funds will be distributed under a formula allocation to states pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds." Decisions on funding will be based on pre-applications.

III. Eligibility Information

7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds, and copies of the preapplication package. Eligible entities for these competitively awarded grants include state and local governments, non-profit corporations, which may include, but not be limited to faith-based and community organizations, Federally recognized Indian tribes, and consortia of eligible entities.

Federally recognized Indian tribes, pursuant to 7 CFR 1944.674, are exempt from the requirement to consult with local leaders including announcing the availability of its statement of activities for review in a newspaper.

As part of the application, all applicants must also provide a Dunn and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405).

The Department of Agriculture is participating as a partner in the Government-wide Grants.gov site. Electronic applications must be submitted through the grants.gov Web site at: *http://www.grants.gov*, following the instructions found on the Web site. Please be mindful that the application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Eastern Standard Time. The paper format deadline is local time for each Rural Development State Office.

IV. Application and Submission Information

Applicants must contact the Rural Development State Office serving the state in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely and untimely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office

Suite 601, Sterling Centre
4121 Carmichael Road
Montgomery, Alabama 36106–3683
(334) 279–3454
TDD (334) 279–3495
Anne Chavers

Alaska State Office

800 West Evergreen, Suite 201
Palmer, Alaska 99645
(907) 761–7740
TDD (907) 761–8905
Debbie I. Davis

Arizona State Office

Phoenix Courthouse and Federal Building
230 North First Avenue, Suite 206
Phoenix, Arizona 85003–1706
(602) 280–8768
TDD (602) 280–8706
Carol Torres

Arkansas State Office

700 West Capitol Avenue, Room 3416
Little Rock, Arkansas 72201–3225
(501) 301–3258
TDD (501) 301–3063
Clinton King

California State Office

430 G Street, #4169
Davis, California 95616–4169
(530) 792–5821
TDD (530) 792–5848
Debra Moretton

Colorado State Office

655 Parfet Street, Room E100
Lakewood, Colorado 80215
(720) 544–2923
TDD (800) 659–2656
Mary Summerfield

Connecticut

Served by Massachusetts State Office

Delaware and Maryland State Office

1221 College Park Drive, Suite 200
Dover, Delaware 19904
(302) 857–3614
TDD (302) 857–3585
Debbie Eason

Florida & Virgin Islands State Office

4440 N.W. 25th Place
Gainesville, Florida 32606–6563
(352) 338–3438
TDD (352) 338–3499
Theresa Purnell

Georgia State Office

Stephens Federal Building
355 East Hancock Avenue
Athens, Georgia 30601–2768
(706) 546–2164
TDD (706) 546–2034
Dawn Pilgrim

Hawaii State Office

(Services all Hawaii, American Samoa, Guam, and Western Pacific)
Room 311, Federal Building
154 Waianuenue Avenue
Hilo, Hawaii 96720
(808) 933–8300
TDD (808) 933–8321
Gayle Kuheana

Idaho State Office

Suite A1
9173 West Barnes Drive
Boise, Idaho 83709
(208) 378–5628
TDD (208) 378–5644
Joyce Weinzetl

Illinois State Office

2118 West Park Court, Suite A
Champaign, Illinois 61821–2986
(217) 403–6222
TDD (217) 403–6240
Barry L. Ramsey

Indiana State Office

5975 Lakeside Boulevard
Indianapolis, Indiana 46278
(317) 290–3100 (ext. 426)
TDD (317) 290–3343
Mary Hawthorne

Iowa State Office

210 Walnut Street Room 873
Des Moines, Iowa 50309
(515) 284–4666
TDD (515) 284–4858
Mary Beth Juergens

Kansas State Office

1303 SW First American Place, Suite 100

Topeka, Kansas 66604–4040
(785) 271–2700
TDD (785) 271–2767
Mike Resnik

Kentucky State Office

771 Corporate Drive, Suite 200
Lexington, Kentucky 40503
(859) 224–7325
TDD (859) 224–7422
Beth Moore

Louisiana State Office

3727 Government Street
Alexandria, Louisiana 71302
(318) 473–7962
TDD (318) 473–7655
Yvonne R. Emerson

Maine State Office

Post Office Box 405
Bangor, Maine 04402–0405
(207) 990–9110
TDD (207) 942–7331
Bob Nadeau

Maryland

Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office

451 West Street Suite 2
Amherst, Massachusetts 01002
(413) 253–4315
TDD (413) 253–4590
Paul Geoffroy

Michigan State Office

3001 Coolidge Road, Suite 200
East Lansing, Michigan 48823
(517) 324–5193
TDD (517) 337–6795
Sonya Wyldes

Minnesota State Office

375 Jackson Street Building, Suite 410
St. Paul, Minnesota 55125
(651) 602–7804
TDD (651) 602–7830
Thomas Osborne

Mississippi State Office

Federal Building, Suite 831
100 West Capitol Street
Jackson, Mississippi 39269
(601) 965–4325
TDD (601) 965–5850
Darnella Smith-Murray

Missouri State Office

601 Business Loop 70 West
Parkade Center, Suite 235
Columbia, Missouri 65203
(573) 876–9303
TDD (573) 876–9480
Becky Eftink

Montana State Office

900 Technology Boulevard, Suite B
Bozeman, Montana 59771
(406) 585–2515
TDD (406) 585–2562
Deborah Chorlton

Nebraska State Office

Federal Building, Room 152
100 Centennial Mall N
Lincoln, Nebraska 68508
(402) 437–5505
TDD (402) 437–5408
Teresa Brohimer

Nevada State Office

1390 South Curry Street
Carson City, Nevada 89703–9910
(775) 887–1222 (ext. 14)
TDD (775) 885–0633
Mona Sargent

New Hampshire State Office

Concord Center
Suite 218, Box 317
10 Ferry Street
Concord, New Hampshire 03301–5004
(603) 223–6046
TDD (603) 229–0536
Sandra Hawkins

New Jersey State Office

5th Floor North, Suite 500
8000 Midlantic Drive
Mt. Laurel, New Jersey 08054
(856) 787–7773
TDD (856) 787–7784
Derrick S. Waltz

New Mexico State Office

6200 Jefferson Street, NE, Room 255
Albuquerque, New Mexico 87109
(505) 761–4944
TDD (505) 761–4938
Susan Gauna

New York State Office

The Galleries of Syracuse
441 South Salina Street, Suite 357
5th Floor
Syracuse, New York 13202
(315) 263–4363
TDD (315) 477–6447
Tia Shulkin

North Carolina State Office

4405 Bland Road, Suite 260
Raleigh, North Carolina 27609
(919) 873–2062
TDD (919) 873–2003
Rebecca Dillard

North Dakota State Office

Federal Building, Room 208
Post Office Box 1737
Bismarck, North Dakota 58502
(701) 530–2046
TDD (701) 530–2113
Barry Borstad

Ohio State Office

Federal Building, Room 507
200 North High Street
Columbus, Ohio 43215–2477
(614) 255–2561
TDD (614) 255–2554
Cathy Simmons

Oklahoma State Office

100 USDA, Suite 108
Stillwater, Oklahoma 74074–2654
(405) 742–1076
TDD (405) 742–1007
Tim Henderson

Oregon State Office

1201 NE Lloyd Boulevard, Suite 801
Portland, Oregon 97232–1274
(503) 414–3340
TDD (503) 414–3387
Barb Brandon

Pennsylvania State Office

One Credit Union Place, Suite 330
Harrisburg, Pennsylvania 17110–2996
(717) 237–2276
TDD (717) 237–2261
Chris Adamchak

Puerto Rico State Office

IBM Building, Suite 601
Munoz Rivera Ave. #654
San Juan, Puerto Rico 00918
(787) 766–5095 (ext. 256)
TDD (787) 766–5332
Jan Vargas

Rhode Island

Served by Massachusetts State Office

South Carolina State Office

Strom Thurmond Federal Building
1835 Assembly Street, Room 1007
Columbia, South Carolina 29201
(803) 765–5870
TDD (803) 765–5697
Lila Moses

South Dakota State Office

Federal Building, Room 210
200 Fourth Street, SW
Huron, South Dakota 57350
(605) 352–1132
TDD (605) 352–1147
Roger Hazuka or Pam Reilly

Tennessee State Office

Suite 300
3322 West End Avenue
Nashville, Tennessee 37203–1084
(615) 783–1300
TDD (615) 783–1397
Abby Boggs

Texas State Office

Federal Building, Suite 102
101 South Main
Temple, Texas 76501
(254) 742–9772
TDD (254) 742–9712
Leon Carey

Utah State Office

Wallace F. Bennett Federal Building
125 South State Street, Room 301
Salt Lake City, Utah 84138
(801) 524–4308
TDD (801) 524–3309
Pam Davidson

Vermont State Office

City Center, 3rd Floor
89 Main Street
Montpelier, Vermont 05602
(802) 828–6021
TDD (802) 223–6365
Heidi Setien

Virgin Islands

Served by Florida State Office

Virginia State Office

Culpeper Building, Suite 238
1606 Santa Rosa Road

Richmond, Virginia 23229
(804) 287–1596
TDD (804) 287–1753
CJ Michels

Washington State Office

1835 Black Lake Boulevard, Suite B
Olympia, Washington 98512
(360) 704–7706
TDD (360) 704–7760
Bill Kirkwood

Western Pacific Territories

Served by Hawaii State Office

West Virginia

Parkersburg West Virginia County Office
91 Boyles Lane
Parkersburg, West Virginia 26104
(304) 422–9070
TDD (304) 284–4836
Penny Thaxton

Wisconsin State Office

4949 Kirschling Court
Stevens Point, Wisconsin 54481
(715) 345–7608 (ext. 111)
TDD (715) 345–7614
Sara Kendall

Wyoming State Office

Post Office Box 82601
Casper, Wyoming 82602–5006
(307) 233–6716
TDD (307) 233–6733
Alan Brooks

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, USDA Rural Development, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via e-mail at *Bonnie.Edwards@wdc.usda.gov*.

V. Application Review Information

Applicants wishing to apply for assistance must make their statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by USDA Rural Development.

All applications for Section 533 funds must be filed with the appropriate Rural Development State Office or grants.gov and must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office. All adverse determinations are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time the applicant is notified of the adverse decision.

If submitting a paper application, applicants will file an original and two copies of Standard Form (SF) 424, "*Application for Federal Assistance,*" and supporting information with the appropriate Rural Development State Office. A pre-application package, including SF–424, is available in any Rural Development State Office. If an electronic application is submitted, applicants will upload the information at grants.gov. All preapplications shall be accompanied by the following information which Rural Development will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the preapplication under the project selection criteria of 7 CFR 1944.679:

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program;

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(3) A description of the process for identifying potential environmental impacts in accordance with 7 CFR 1944.672, and the provisions for compliance with Stipulation I, A–G of the Programmatic Memorandum of Agreement, also known as PMOA, (RD Instruction 2000–FF, available in any Rural Development State Office or at *http://www.rurdev.usda.gov/regs/pdf/2000ff.pdf*) in accordance with 7 CFR 1944.673(b);

(4) The development standard(s) the applicant will use for the housing preservation work; and, if not the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(5) The time schedule for completing the program;

(6) The staffing required to complete the program;

(7) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(8) The geographical area(s) to be served by the HPG program;

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, *i.e.,* monthly, quarterly, lump sum for program activities, etc.;

(10) A copy of an indirect cost proposal as required in 7 CFR parts 3015, 3016, and 3019, as applicable, when the applicant has another source of Federal funding in addition to the Rural Development HPG program;

(11) A brief description of the accounting system to be used;

(12) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with 7 CFR 1944.683(b) and the monitoring plan for rental properties and cooperatives (when applicable) according to 7 CFR 1944.689;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(14) The use of program income, if any, and the tracking system used for monitoring same;

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status;

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in 7 CFR 1944.671(b).

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, including, in the case of a private non-profit organization, which may include, but not be limited to, faith-

based and community organizations, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of "organization" in 7 CFR 1944.656 must also be included.

(d) For a private non-profit entity, which may include, but not be limited to, faith-based and community organizations, the most recently audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) A statement containing the component for alleviating any overcrowding as defined by 7 CFR 1944.656.

(g) Applicant must submit an original and one copy of Form RD 1940–20, "*Request for Environmental Information,*" prepared in accordance with Exhibit F–1 of RD Instruction 1944–N (available in any Rural Development State Office or at *http://www.rurdev.usda.gov/regs/forms/1940-20.pdf*).

(h) Applicant must also submit a description of its process for:

(1) Identifying and rehabilitating properties listed on or eligible for listing on the National Register of Historic Places;

(2) Identifying properties that are located in a floodplain or wetland;

(3) Identifying properties located within the Coastal Barrier Resources System; and

(4) Coordinating with other public and private organizations and programs that provide assistance in the rehabilitation of historic properties (Stipulation I, D, of the PMOA, RD Instruction 2000–FF, available in any Rural Development State Office or at *http://www.rurdev.usda.gov/regs/pdf/2000ff.pdf.*

(i) The applicant must also submit evidence of the State Historic Preservation Office's, (SHPO), concurrence in the proposal, or in the event of nonconcurrence, a copy of SHPO's comments together with evidence that the applicant has received the Advisory Council on Historic Preservation's (Council) advice as to how the disagreement might be resolved, and a copy of any advice provided by the Council.

(j) The applicant must submit written statements and related correspondence reflecting compliance with 7 CFR 1944.674(a) and (c) regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(k) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to 7 CFR 1944.674(b). The application must contain a description of how the comments (if any were received) were addressed.

(l) The applicant must submit an original and one copy of Form RD 400–1, "Equal Opportunity Agreement," and Form RD 400–4, "*Assurance Agreement,*" in accordance with 7 CFR 1944.676. These forms can be obtained at any state office or at *http://www.rurdev.usda.gov/rbs/oa/RD-400-1.pdf* and *http://www.rurdev.usda.gov/regs/forms/0400-04.pdf.*

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

VI. Selection Criteria

In accordance with 7 CFR 1944.679 applicants and proposed projects must meet the following criteria:

(a) Provide a financially feasible program of housing preservation assistance. "Financially feasible" is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serve eligible rural areas with a concentration of substandard housing for households with very low-or low-income.

(c) Be an eligible applicant as defined in 7 CFR 1944.658.

(d) Meet the requirements of consultation and public comment in accordance with 7 CFR 1944.674.

(e) Submit a complete preapplication as outlined in 7 CFR 1944.676.

VII. Points System

For applicants meeting all of the requirements listed above, the Rural Development State Offices will then use weighted criteria in accordance with 7 CFR part 1944, subpart N as selection for the grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the state.

(a) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(1) More than 80%: 20 points.
(2) 61% to 80%: 15 points.
(3) 41% to 60%: 10 points.
(4) 20% to 40%: 5 points.
(5) Less than 20%: 0 points.

(b) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) in comparison to the total cost of unit preservation. This percentage reflects maximum repair or rehabilitation results with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(1) 50% or less: 20 points.
(2) 51% to 65%: 15 points.
(3) 66% to 80%: 10 points.
(4) 81% to 95%: 5 points.
(5) 96% to 100%: 0 points.

(c) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following (30 points maximum):

(1) The organization or a member of its staff has at least one or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(2) The organization or a member of its staff has at least one or more years experience successfully managing and

operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(3) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(d) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (*i.e.,* rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656: 10 points.

(e) The program will use less than 20 percent of HPG funds for administration purposes:

(1) More than 20%: Not eligible.
(2) 20%: 0 points.
(3) 19%: 1 point.
(4) 18%: 2 points.
(5) 17%: 3 points.
(6) 16%: 4 points.
(7) 15% or less: 5 points.

(f) The proposed program contains a component for alleviating overcrowding as defined in 7 CFR 1944.656: 5 points.

In the event more than one preapplication receives the same amount of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points for Section VII (a). Further, in the event that preapplications are still tied, then those preapplications still tied will be ranked based on the percentage for HPG fund use (low to high). Further, for applications where assistance to rental properties or cooperatives is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of 5 years is required). For this part, ranking will be based from most to least number of years.

Finally, if there is still a tie, then a lottery system will be used. After the award selections are made all applicants will be notified of the status of their applications by mail.

VIII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

Dated: April 16, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–9648 Filed 4–26–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Nevada County and Placer County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Nevada County and Placer County Resource Advisory Committee (RAC) will meet on May 4, 2010, in Truckee, California. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self-Determination Act of 2000 (Payments to States) as reauthorized by Public Law 110–343 and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Eldorado, Lake Tahoe Basin Management Unit and Tahoe National Forests in Nevada and Placer Counties.

DATES: The meeting will be held Tuesday, May 4, 2010 at 10 a.m.

ADDRESSES: The meeting will be held at the Truckee Ranger Station, 10811 Stockrest Springs Rd., Truckee, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, (530) 478–6205, E-Mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and introductions; (2) Overview of authorizing legislation; (3) Discussion of operating and project approval guidelines; (4) Election of RAC chair; and (5) Comments from the public. The meeting is open to the public and the public will have an opportunity to comment at the meeting.

Dated: April 21, 2010.

Tom Quinn,

Forest Supervisor.

[FR Doc. 2010–9707 Filed 4–26–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on May 10, 2010, in Sierraville, California. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self Determination Act of 2000 (Payments to States) as reauthorized by Public Law 110–343 and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held Monday, May 10, 2010 at 9 a.m.

ADDRESSES: The meeting will be held at the Sierraville Ranger Station, 317 S. Lincoln, Sierraville, CA.

FOR FURTHER INFORMATION CONTACT: Aim Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St., Nevada City, CA 95959, (530) 478–6205, e-mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and introductions; (2) Review of RAC operating guidelines; (3) Discussion and voting on project proposals; and (4) Comments from the public. The meeting is open to the public and the public will have an opportunity to comment at the meeting.

Dated: April 21, 2010.

Tom Quinn,

Forest Supervisor.

[FR Doc. 2010–9708 Filed 4–26–10; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Tuesday and Wednesday, May 11–12, 2010, at the times and location noted below. A public hearing will also be held on the morning of May 12, 2010.

DATES: The schedule of events is as follows:

Tuesday, May 11, 2010

10–11 a.m. Briefing on Passenger Vessels Proposed Rule (closed to public).
11–2:30 p.m. Planning and Evaluation Committee.
2:30–3 Budget committee.
3–3:30 Ad Hoc Committee on Frontier Issues (closed to public).
3:30–5 Ad Hoc Committee on Medical Diagnostic Equipment (closed to public).

Wednesday, May 12, 2010

9–Noon Public Hearing on Information and Communication Technology Standards and Guidelines.
1:30–3 p.m. Board Meeting.

ADDRESSES: All meetings will be held at the Embassy Suites DC Convention Center Hotel, located at 900 10th Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: The Board will hold a public hearing on its refresh of accessibility criteria for information and communications technologies covered by the Rehabilitation Act (section 508) and the Telecommunications Act (section 255). The hearing will take place on Wednesday, May 12, 2010 from 9 a.m. to noon. Details of this hearing were published in the **Federal Register** on April 13, 2010 (75 FR 18781). At the Board meeting scheduled on the afternoon of Wednesday, May 12, 2010, the Access Board will consider the following agenda items:

- Approval of the draft March 31, 2010 meeting minutes.
- Budget Committee Report.
- Planning and Evaluation Committee Report.
- Ad Hoc Committee Reports.
- Executive Director's Report.
- ADA and ABA Guidelines; Federal Agency Updates.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meetings and public hearing. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (*see http://www.access-board.gov/about/policies/fragrance.htm* for more information).

David M. Capozzi,
Executive Director.

[FR Doc. 2010–9723 Filed 4–26–10; 8:45 am]
BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Survey: Institutional Remittances to Foreign Countries

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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)).

DATES: Written comments must be submitted on or before June 28, 2010. June 25, 2010

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Becker, Current Account Services Branch, Balance of Payments Division, (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; *phone:* (202) 606–9576; *fax:* (202) 606–5314; or via e-mail at *robert.becker@bea.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Institutional Remittances to Foreign Countries Survey (Form BE–40) is used by the Bureau of Economic Analysis (BEA) for compiling the U.S. international transactions accounts (ITAs), which BEA publishes quarterly in news releases, on its Web site, and in its monthly journal, the *Survey of Current Business.* These accounts provide a statistical summary of all U.S. international transactions and are a principal federal economic indicator. In addition, they provide data for other U.S. economic measures and accounts, contributing particularly to the National Income and Product Accounts. The ITAs are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in this survey is used to develop the "private remittances" portion of the ITAs. Without this information, an integral component of the ITAs would be omitted. No other government agency collects comprehensive quarterly data on institutional remittances of funds to foreign counties. There are no changes proposed to the form or instructions.

Potential respondents are U.S. religious, charitable, educational, scientific and similar organizations that voluntarily agree to provide data regarding transfers to foreign residents and organizations and their expenditures in foreign countries.

II. Method of Collection

Survey forms are mailed to potential respondents in January of each year; respondents expected to file on a quarterly basis are sent multiple copies. Quarterly reports are due 30 days after the close of each calendar or fiscal quarter and annual reports are due 90 days after the close of the calendar or fiscal year.

The information is collected quarterly from organizations remitting $1 million or more each year and annually for organizations remitting at least $100,000 but less than $1 million each year. Organizations with remittances of less than $100,000 in the year covered by the report are exempt from reporting.

III. Data

OMB Control Number: 0608–0002.
Form Number: BE–40.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions.
Estimated Number of Respondents: 1,220.
Estimated Time per Response: 1 hour, 30 minutes.
Estimated Total Annual Burden Hours: 2,294.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Voluntary.
Legal Authority: Bretton Woods Agreement Act, Section 8, and E.O. 10033, as amended.

IV. Request for Comments

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

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

Dated: April 21, 2010.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2010–9647 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 8 of the 2008 Panel

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 28, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members' participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2008 panel is currently scheduled for 4 years and will include 13 waves of interviewing beginning September 2008. Approximately 65,300 households were selected for the 2008 panel, of which 42,032 households were interviewed. We estimate that each household contains 2.1 people, yielding 88,267 person-level interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2011. The total annual burden for 2008 Panel SIPP interviews would be 132,400 hours in FY 2011.

The topical modules for the 2008 Panel Wave 8 collect information about:

- Annual Income and Retirement Accounts.
- Taxes.
- Child Care.
- Work Schedule.

Wave 8 interviews will be conducted from January 1, 2011 through April 30, 2011.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews require an additional 1,553 burden hours in FY 2011.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 13 times (13 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Control Number: 0607–0944.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 88,267 people per wave.

Estimated Time per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 133,953 [1].

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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

[1] (88,267 × .5 hr × 3 waves + 3,100 × .167 hr × 3 waves).

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

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

Dated: April 21, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–9670 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV13

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Atlantic Coastal Shark Fishery

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

ACTION: Notice of determination of non-compliance; Declaration of a moratorium.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), NMFS, upon a delegation of authority from the Secretary of Commerce (Secretary), has determined that the State of New Jersey has failed to carry out its responsibilities under the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for Atlantic Coastal Sharks (Plan) and that the measures New Jersey has failed to implement and enforce are necessary for the conservation of the shark resource. This determination is consistent with the findings of the Commission on February 4, 2010. Pursuant to the Act, a Federal moratorium on fishing, possession, and landing of all shark species indentified in the Commission Plan is hereby declared and will be effective on July 30, 2010. The moratorium will not be withdrawn by NMFS until New Jersey is found to have come back into compliance with the Commission's Interstate Fisheries Management Plan for Atlantic Coastal Sharks.

DATES: Effective July 30, 2010.

ADDRESSES: Emily Menashes, Acting Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, NMFS Office of Sustainable Fisheries, (301) 713–2334.

SUPPLEMENTARY INFORMATION:

Non-Compliance Statutory Background

The Atlantic Coastal Act, 16 U.S.C. 5101 *et seq.*, sets forth a non-compliance review and determination process that is triggered when the Commission finds that a state has not implemented measures specified in the Plan and refers that determination to the Secretary for review and potential concurrence. The Secretary delegated all decision-making under this process to NMFS, although NMFS is required to notify the Secretary before any final action is taken.

The Atlantic Coastal Act's non-compliance process involves two stages of decision-making. In the first stage, the Secretary (delegated to NMFS) must make two findings: 1) whether the state in question has failed to carry out its responsibility under the Commission's Interstate Fishery Management Plan; and if so, 2) whether the measures that the state failed to implement and enforce are necessary for the conservation of the fishery in question. These initial findings must be made within 30 days after receipt of the Commission's non-compliance referral and consequently, this first stage of decision-making is referred to as the "30–Day Determination." A positive 30–Day Determination triggers a mandatory moratorium on fishing within state waters for the fishery in question. This moratorium may begin immediately or at any time within six months of the 30–Day Determination.

Commission Referral of Non-Compliance

On February 4, 2010, the Commission found that the State of New Jersey is out of compliance with the Commission Plan. Specifically, the Commission found that New Jersey has not implemented regulations that are necessary to rebuild depleted shark stocks, ensure sustainable harvest of others, and provide protection for sharks in nursing and pupping grounds found within State waters.

The Commission Plan requires all member States to implement the Plan's shark regulations by January 1, 2010. As of January 2010, all member States except New Jersey had implemented some of the plan and/or had tentative dates for implementation of the plan or conservation equivalency measures. According to New Jersey's Division of Fish and Wildlife, conforming shark regulations have been drafted. These draft regulations were submitted to the Governor's office for approval, publication, and public comment in the fall of 2009. However, a change of State administration and other ministerial delays prevented the regulations from being implemented. During both the Commission's February 2, 2010, Coastal Shark Management Board meeting and its February 4, 2010, Policy and Business Board meetings, New Jersey did not protest the Boards' determinations that they were not in compliance with the Plan.

Agency Action In Response to Commission Non-Compliance Referral

The Commission forwarded the findings of their vote on February 4, 2010, in a formal non-compliance referral letter that was received on February 8, 2010. In response, NMFS began the Atlantic Coastal Act's 30–Day Determination clock. Immediately thereafter, NMFS sent letters to the State of New Jersey, the Mid-Atlantic and New England Fishery Management Councils, and to the Commission, advising them of the Atlantic Coastal Act's non-compliance process, inviting them to provide commentary on the issue, and in the case of New Jersey, inviting the State to meet with NMFS to present its position in person or provide written comments on the Commission's findings.

New Jersey elected to meet with NMFS staff on March 2, 2010, via conference call and submitted a written statement outlining their timetable for implementing the regulations for the Atlantic Coastal Shark Plan. Specifically, staff of New Jersey's Department of Environmental Protection (NJDEP) outlined their intention to publish the proposed rule, solicit and respond to public comment, and have a rule in place by mid-July that would be compliant with the Commission's Plan. The Commission also responded on February 25, 2010, re-emphasizing the importance of the seasonal closure to protect pupping sandbar sharks from May 15 July 15. No comments have yet been received from the New England Fishery Management Council or the Mid-Atlantic Fishery Management Council.

Agency's Findings

New Jersey did not fulfill its responsibilities under the Commission's Atlantic Coastal Shark Plan

New Jersey does not dispute that it has not implemented the management measures for the Commission's Atlantic Coastal Shark Plan. In fact, New Jersey has already taken several steps to implement the Plan and has been in communication with NMFS regarding its timetable for implementing the Plan. NMFS determined the measures that New Jersey failed to implement are necessary for the conservation of the fishery

The Atlantic shark species groups included in the Commission's Plan are smooth dogfish species (smooth dogfish), small coastal sharks species (Atlantic sharpnose, finetooth, blacknose, and bonnethead sharks), non-sandbar large coastal sharks species (silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks), pelagic species (shortfin mako, porbeagle, common thresher, oceanic whitetip, and blue sharks), prohibited species (sandtiger, bigeye sandtiger, whale, basking, white, dusky, bignose, Galapagos, night, reef, narrowtooth, Caribbean sharpnose, smalltail, Atlantic angel, longfin mako, bigeye thresher, sharpnose sevengill, bluntnose sixgill, and bigeye sixgill sharks), and research species (sandbar sharks).

As a whole, the measures in the Commission's Plan are necessary for the conservation of Atlantic coastal sharks. Relative to other fish species, all shark species have a very low reproductive potential due to a slow growth rate, late sexual maturity, one to two-year reproductive cycles, a small number of young per brood, and specific requirements for nursery areas. Additionally, simple biological information on many species such as reproductive cycles, nursery and mating areas, number of young per brood, and age at maturity is unknown. A number of shark species, such as sandbar, dusky, blacknose, and porbeagle sharks, are overfished with lengthy rebuilding time periods ranging from 19 years to approximately 400 years. Other species, such as shortfin mako sharks, are not overfished but are experiencing overfishing. Many species, such as white, basking, whale, sand tiger, and bigeye sand tiger sharks, have an unknown status but are prohibited in Federal waters and in the Commission's Plan due to concerns that fishing pressure could lead to overfishing given those species' life history and very low reproductive capacity. While all known shark species can be identified to species by shark experts, identification of certain species of sharks can be easily confused by recreational and commercial fishers. Incorrect identification could lead to additional mortality on stocks that cannot handle such mortality. As such, many of the shark management measures, both Federal regulations and those in the Commission Plan, are designed to provide conservation to some species by extending those regulations to all species. This approach is made to address any mis-identification issues for species that look alike to the average person. These types of regulations include but are not limited to placing species into species groups based on the gear the species is usually caught on, setting the recreational trip and size limits to apply to all species, requiring all state dealers to obtain a Federal dealer permit (which requires a shark identification course), and establishing the seasonal closure for many species from May 15 to July 15.

Current New Jersey regulations require commercial fishermen to obtain a Federal commercial shark permit. Thus, New Jersey commercial shark fishermen must comply with the Shark Plan by virtue of their Federal permit, even in the absence of state shark regulations. Many of the Federal commercial regulations overlap with the Commission's Plan. However, current New Jersey recreational regulations, such as the 48 inch total length minimum size and 2 fish per vessel (or 2 per person if shore fishing) are less restrictive than either the Federal or Commission Plan regulations. Additionally, New Jersey does not prohibit landing of all the Plan's prohibited and research species. Because of these less restrictive measures, New Jersey fishermen could land more sharks, and smaller sharks including some species, such as sandbar, dusky, and porbeagle sharks, which have rebuilding time periods of at least 70 years. The Commssion has noted that the seasonal closure of the pupping and nursing grounds in Delaware Bay and the prohibition on landing of sandbar and other coastal shark species is necessary to rebuild shark stocks. The Commission's Technical Committee has identified Delaware Bay as one of the most important nursing grounds for depleted sandbar sharks on the Atlantic Coast. This area and other areas in New Jersey state waters is immediately adjacent to Federal determinations of essential fish habitat for one or more life stage (neonates, juveniles, or adults) for many species of sharks, including basking, great hammerhead, scalloped hammerhead, white, dusky, tiger, sand tiger, angel, Atlantic sharpnose, shortfin mako, blue, and common thresher sharks. Since the State of New Jersey occupies a significant portion of the Delaware Bay shoreline and also is adjacent to the essential fish habitat for many shark species, the State's implementation of measures consistent with the Commission Plan is crucial. Accordingly, the State of New Jersey's failure to implement conservation measures under the Plan could jeopardize both Commission and Federal rebuilding efforts.

The Moratorium shall be implemented on July 30, 2010

Pursuant to the Atlantic Coastal Act, NMFS must implement a moratorium within 180 days of the positive 30–Day Determination that is being made in this matter. On March 16, 2010, NMFS notified the State of New Jersey and the Commission of its determination that New Jersey failed to carry out its responsibilities under the Commission's Plan and that the measures New Jersey has failed to implement and enforce are necessary for the conservation of the shark resource. In this determination and notification NMFS detailed the actions necessary to avoid the implementation of a Federal moratorium for sharks in New Jersey waters. In the initial determination NMFS would have implemented a moratorium that would have prohibited, in State waters, the possession of the Commission's non-sandbar large coastal shark species, the Commission prohibited species, and the Commission research species (sandbar sharks) starting May 15, 2010, followed by the full moratorium prohibiting, in State waters, the possession of all shark species listed in the Commission Plan starting July 30, 2010. The initial May 15 date for a moratorium was necessary to provide substantial conservation benefit to those Commission shark species that utilize the pupping areas located in New Jersey state waters early in the year. However, on March 25, 2010 New Jersey effected a Notice of Administrative Change (N.J.A.C. 7:25–18.1) closing the shark fishing season in State waters from May 15 July 15. Although the State's closure does not explicitly prohibit possession of all the prohibited species in the Commission's Plan it has been determined that the closure protects shark pupping grounds in New Jersey waters and meets the conservation objectives of a Federal moratorium on the possession of the Commission's non-sandbar large coastal shark species, the Commission's prohibited species, and the Commission's research species (sandbar sharks) beginning May 15, 2010. The species not included in the State's

closure are: longfin mako, bigeye thresher, sevengill, sixgill, bigeye sixgill, Caribbean sharpnose, smalltail, and Atlantic angel sharks. These species, however, are not likely to be impacted in the short term, prior to July 30, 2010, as their distribution is either offshore in federally-regulated waters, or rarely encountered in New Jersey inshore waters. Accordingly, New Jersey's new regulations have mooted the conservation need for a May 15, 2010, Federal moratorium and as such, a May 15th Federal moratorium for these species would achieve no conservation objective. Since New Jersey has yet to adopt all of the provisions of the Commission's shark plan, NMFS has determined that a moratorium effective July 30, 2010, would provide conservation benefit for all shark species, including the Commission's prohibited shark species and pelagic shark species that are observed off the coast of New Jersey later in the year, by preventing shark fishing during a time period when substantial shark fishing is still occurring.

NMFS staff analyzed several moratorium dates prior to deciding upon the dates specified above. In short, there were three categories of timing alternatives for Atlantic Coastal Act moratoria: (1) implement a full moratorium on all shark species starting May 15 (the day the Commission's seasonal shark closure begins); (2) implement a full moratorium on the last possible date (roughly Day 180 of the statutory six-month timeframe); and (3) implement a moratorium for some shark species on May 15 to be consistent with the Commission Plan's seasonal shark closure that would expand to a full moratorium for all Commission shark species on July 30. In this circumstance, the chosen third alternative provided significant Atlantic coastal shark biological/conservation benefits, implemented a seasonal closure similar to that of the Commission Plan, and satisfied the need for public notice of the moratorium and interagency logistical coordination. In March and April, commercial New Jersey fishermen land approximately 5–percent and recreational New Jersey fishermen land less than one percent of the yearly average shark landings. As such, an immediate closure would not offer much more conservation value over a May 15 closure. The May 15th and July 30th dates provided more conservation than the end of the six-month moratorium window, which would be September 6. By September, the fishery is beginning to wind down with approximately 65 and 75 percent of the average yearly commercial and recreational shark catch already landed, respectively. This is due to lower water temperatures and the resulting southerly migration of many shark species away from New Jersey. For this reason, a closure near the end of the six-month moratorium window would have had minimal conservation benefit.

As previously mentioned, New Jersey has already effected an administrative change implementing a seasonal closure protecting shark nursery grounds from May 15 to July 15. NMFS has determined that this action negates the need to implement a Federal moratorium for select shark species beginning May 15, 2010 as outlined in the preferred third alternative described in the previous paragraph. The Commission emphasized, and NMFS concurs, that the state seasonal closure is of particular importance in the protection of certain shark stocks as it will close important pupping and nursing grounds in Delaware Bay and other State waters. New Jersey's action satisfied that conservation need.

Staff from NJDEP have also indicated that management measures fully implementing the Commission's Plan are expected to be in place by July 19, 2010. These measures in the Plan are needed given the biology and stock status of many species of sharks. As such, the State's cooperation with the Commission's Plan is crucial. Accordingly, its failure to implement conservation measures under the Commission's Plan will most certainly jeopardize any rebuilding efforts.

Moratorium Prohibitions

There will be a prohibition on the possession of all Commission shark species, a group that includes non-sandbar large coastal shark species, the Commission's prohibited species, the Commission's research species (sandbar sharks), small coastal species, pelagic species, and smooth dogfish species, beginning July 30, 2010. Once the moratorium takes effect, proscribed conduct shall reflect the prohibited acts mandated by the Atlantic Coastal Act as set forth as 16 U.S.C. 5106(e). Accordingly, as of Friday, July 30, 2010, it shall be unlawful for any person to do the following:

1. Engage in fishing for the following species within New Jersey waters - 0 to 3 nautical miles (0 to 5.5 kilometers) from shore: Commission large coastal sharks (silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, smooth hammerhead), the Commission's prohibited species (whale, basking, sand tiger, bigeye sand tiger, white, dusky, night, bignose, Galapagos, Caribbean reef, narrowtooth, longfin mako, bigeye thresher, sevengill, sixgill, bigeye sixgill, Caribbean sharpnose, smalltail, and Atlantic angel sharks), the Commission's research species (sandbar sharks), the Commission's small coastal sharks (Atlantic sharpnose, blacknose, finetooth, and bonnethead sharks), the Commission's pelagic sharks (shortfin mako, thresher, oceanic whitetip, porbeagle, and blue sharks), and smooth dogfish.

2. Land, attempt to land, or possess any of the shark species identified in paragraph 1 (above) in the State of New Jersey.

3. Fail to return to the water immediately, with a minimum of injury, any Commission shark species identified in paragraph 1 (above) that are taken incidental to fishing for any other fish species (i.e., as bycatch);

4. Refuse to permit any officer authorized to enforce the provisions of this moratorium to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this moratorium;

5. Forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this moratorium;

6. Resist a lawful arrest for any act prohibited by this moratorium;

7. Ship, transport, offer for sale, sell, purchase, import, or have custody, control, or possession of, any shark taken or retained in violation of this moratorium; or

8. Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this moratorium.

Classification

This declaration of a moratorium is consistent with the Atlantic Coastal Act at 16 U.S.C. 5106 insofar as New Jersey has been found to have failed to carry out its responsibilities under the Commission's Atlantic Coastal Shark Plan and the measures that New Jersey has failed to implement and enforce are necessary for the conservation of the shark fishery. Further, the moratorium prohibits fishing for Atlantic coastal sharks within New Jersey state waters and/or possessing or landing Atlantic coastal sharks and is being implemented within six months of the agency findings.

The declaration of moratorium is consistent with the Administrative

Procedures Act at 5 U.S.C. 555 insofar as New Jersey was promptly notified of the Commission's non-compliance referral and given an opportunity to meet with the agency and provide comments on the matter. New Jersey has also been promptly notified of the agency's determination in this matter. Additionally, NMFS provided notice to the public of this compliance action in a notice published in the **Federal Register** (75 FR 9158, March 1, 2010). NMFS received one comment in response to that notice. The comment supported closing all shark fishing indefinitely off the coast of New Jersey. In response NMFS finds that the comment goes beyond the scope of shark conservation management measures as detailed in the Commission's Plan, and although we concur that a full moratorium on the possession of sharks in the State's waters is necessary for shark conservation beginning July 30, 2010, it will only be in place so long as the State of New Jersey remains out of compliance with the Commission's Plan. Action beyond that is not warranted in this action.

The Assistant Administrator for Fisheries, NOAA (AA), finds that providing additional prior public notice and opportunity for comment is impracticable and unnecessary. Providing additional notice and opportunity for comment would be impracticable, because it would prevent the agency from executing its functions under the Act in a timely manner. The Act contemplates quick action on the declaration of a moratorium that would not be possible if additional notice and an opportunity for comment are provided. Furthermore, providing additional notice and opportunity for comment would be unnecessary because it would serve no purpose. The nature of a moratorium is described in the Act and, therefore, cannot be modified in response to public comments.

The declaration of moratorium does not trigger the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because prior notice and opportunity for public comment are not required for this determination by the Administrative Procedures Act or any other law.

The declaration of a moratorium does not fall under review under Executive Order 12866 insofar as the moratorium is not a regulatory action of the agency but is an action mandated by Congress upon the findings of certain conditions precedent set forth in the Atlantic Coastal Act, which also prescribes the nature and extent of the moratorium. Although the recreational and commercial shark fisheries in New Jersey are of importance to the State, the moratorium as proposed is not expected to materially or adversely affect the economy or have an impact of over $100 million. New Jersey has expressed the desire to come into compliance with the Commission's Plan within this calendar year, so although the state has not yet completed an affirmative and observable regulatory action, NMFS fully expects New Jersey to come into compliance with the Plan by the end of the calendar year. The matter creates no serious inconsistency with actions by other agencies and it is not expected to have material budgetary impacts. The declaration of moratorium is not significant within the meaning of the Executive Order.

The declaration of moratorium is not the result of a policy formulated or implemented by the agency, but is instead the result of the application of found facts to the Congressional standards set forth in the Atlantic Coastal Act and as such, the declaration does not implicate federalism in the manner contemplated by Executive Order 13132. Further, the agency has consulted with New Jersey to the maximum extent practicable in this matter given the truncated timeframe set forth in the Atlantic Coastal Act. Rather, the Act provides clear evidence that Congress intended the Secretary to have the authority to preempt state law. That authority has been delegated from the Secretary to NMFS. The scope of the moratorium reflects the standards set forth in the Atlantic Coastal Act, and as such restricts state law to the minimum level necessary to further the objectives of the statute.

Authority: 16 U.S.C. 5101 *et seq.*

Dated: April 22, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–9738 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW06

Endangered Species; File No. 14510

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center, 3333 North Torrey Pines Court, La Jolla, CA 92037–1023, has been issued a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), olive ridley (*Lepidochelys olivacea*), and leatherback (*Dermochelys coriacea*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Amy Hapeman (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 18, 2009, notice was published in the **Federal Register** (74 FR 59525) that a request for a scientific research permit to take had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The purpose of the proposed research project is to initiate a baseline study of the status of sea turtles in the San Gabriel River and Alamitos Bay in Long Beach, California. Researchers would also opportunistically take samples and potentially track sea turtles incidentally taken in coastal power plants off California and that strand live in the marine environment. Researchers may annually capture, measure, weigh, photograph/video, flipper tag, passive integrated transponder tag (PIT), tissue biopsy, blood sample, scute scrape, lavage, ultrasound, oral swab, cloacal swab, inject tetracycline, and release up to: ten green, one olive ridley, and three loggerhead sea turtles taken in power plant entrainments; four green, one olive ridley, one loggerhead, and two leatherback sea turtles that strand in the marine environment; and 35 green, six loggerhead, and six olive ridley sea turtles during captures as part of the San Gabriel and Los Alamitos Bay California project. Some turtles may have satellite transmitters, sonic tags, or camera attached. Researchers would also have

authority to authority to salvage, necropsy, and sample animals that die as a result of entrainments or strandings. The permit is issued for five years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 21, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–9736 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. We received a timely request to revoke one antidumping duty order in part. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. We also received a timely request to revoke in part the antidumping duty order on Certain Orange Juice from Brazil with respect to one exporter.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ("POR") listed below. If a producer or exporter named in this initiation notice had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("the Act"). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than March 31, 2011.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil:	
Certain Hot-Rolled Carbon Steel Flat Products A–351–828	3/1/09–2/28/10
Companhia Siderurgica Paulista (Cosipa).	
Usiminas Siderurgicas de Minas Gerais, S.A. (Usiminas).	
Companhia Siderurgica de Tubarao (CST).	
Companhia Siderurgica Nacional (CSN).	
Certain Orange Juice A–351–840	3/1/09–2/28/10
Fischer S/A Agroindustria/Fischer S.A. Comercio, Industria, and Agricultura.	
Sucocitrico Cutrale S.A.	
Coinbra-Frutesp S.A.	
Montecitrus Trading S.A.	
Germany:	
Brass Sheet and Strip A–428–602	3/1/09–2/28/10
Wieland-Werke AG.	
Thailand:	
Circular Welded Carbon Steel Pipe and Tube A–549–502	3/1/09–2/28/10
Saha Thai Steel Pipe Company, Ltd.	
The People's Republic of China:	
Certain Tissue Paper Products[3] A–570–894	3/1/09–2/28/10
Fujian Provincial Shaowu City Huaguang Special Craft Co., Ltd.	
Max Fortune Industrial Limited.	
Max Fortune (FZ) Paper Products Co., Ltd. (f/k/a Max Fortune (FETDE) Paper Products Co., Ltd.).	
Max Fortune (Vietnam) Paper Products Company Limited.	
Circular Welded Austenitic Stainless Pressure Pipe[4] A–570–930	9/5/08—2/28/10
Zhejiang Jiuli Hi-Tech Metals Co., Ltd.	
Glycine[5] A–570–836	3/1/09–2/28/10
A&A Pharmachem Inc.	
Advance Exports.	
Aico Laboratories Ltd.	
Baoding Mantong Fine Chemistry Co., Ltd.	
Beijing Onlystar Technology Co. Ltd.	
Bulk Pharmaceuticals Corp.	
Changzhou An-Yuan Imp. Exp. Co.	
China Jiangsu International.	
Chiyuen International Trading Ltd.	
Easybuyer Hong Kong Ltd.	
General Ingredient Inc.	
Hebei Donghua Chemical Corporation.	
Jizhou City Huayang Chemical Co., Ltd.	
Keele Warehousing & Logistics.	
Kissner Milling Co. Ltd.	
Kowa Company Ltd.	
Long Dragon Company Ltd.	
Maruzen Chemicals Company Limited.	
Nantong Dongchang Chemical Industry Corp.	
Nutracare International.	
Pancosma Canada.	
Paras Intermediates Pvt. Ltd.	
Qingdao Samin Chemical Co., Ltd.	
Ravi Industries.	
Salvi Chemical Industries.	

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Samin Chemical Co., Ltd. Shaanxi Maxsun Trading Co., Ltd. Shijiazhuang Green Ccarbon Products Co., Ltd. Showa Denko K.K. Sinochem Qingdao Company, Ltd. Tianjin Tiancheng Pharmaceutical Company. Yuki Gosei Kogyo Co., Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1765(a)), and 19 CFR 351.221(c)(1)(i).

Dated: April 19, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–9491 Filed 4–23–10; 4:15 pm]

BILLING CODE 3510–DS–P

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Tissue Paper Products from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If the above-named company does not qualify for a separate rate, all other exporters of Circular Welded Austenitic Stainless Pressure Pipe from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Glycine from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions from the People's Republic of China: Initiation of Antidumping Duty Investigation

EFFECTIVE DATE: April 27, 2010.

FOR FURTHER INFORMATION CONTACT: John Hollwitz, Andrea Staebler Berton or Charles Riggle, AD/CVD Operations, Office 8, (202) 482–2336, (202) 482–4037 or (202) 482–0650, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 31, 2010, the Department of Commerce (the "Department") received a petition concerning imports of aluminum extrusions from the People's Republic of China ("PRC") filed in proper form by the Aluminum Extrusions Fair Trade Committee,[1] and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners"). *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Aluminum Extrusions from the People's Republic of China dated March 31, 2010 ("Petition"). On April 6 and April 7, 2010, the Department issued requests for information and clarification of certain areas of the Petition. Petitioners timely filed additional information on April 9, 2010,[2] and on April 19, 2010.[3] On April 14, 2010, the Department asked Petitioners additional questions regarding the re–bracketing of certain information. Petitioners responded to the Department's questions in the Second Supplement to the AD Petition, dated April 15, 2010 ("Second Supplement to the AD Petition").

The period of investigation ("POI") is July 1, 2009, through December 31, 2009. *See* 19 CFR 351.204(b)(1).

In accordance with section 732(b) of the Tariff Act of 1930, ("the Act"), Petitioners allege that imports of

[1] The Aluminum Extrusions fair Trade Committee is comprised of Aerolite Extrusion Company, Alexandria Extrusion Company, Benada Aluminum of Florida, Inc., William L. Bonnell Company, Inc., Frontier Aluminum Corporation, Futura Industries Corporation, Hydro Aluminum North America, Inc., Kaiser Aluminum Corporation, Profile Extrusions Company, Sapa Extrusions, Inc. and Western Extrusions Corporation.

[2] *See* Aluminum Extrusions from the People's Republic of China: Petitioner's Response to the Department's April 6, 2010, Request for Clarification of Certain Items Contained in the Petition, dated April 9, 2010 ("Supplement to General Issues Petition").

[3] *See* Aluminum Extrusions from the People's Republic of China: Petitioner's Response to the Department's April 7, 2010, Request for Clarification of Certain Items Contained in the Petition, dated April 19, 2010 ("Supplement to the AD Petition").

aluminum extrusions from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are an interested party, as defined in section 771(9)(C), (D), and (F) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation that Petitioners are requesting the Department to initiate (*see* "Determination of Industry Support for the Petition" section below).

Scope of the Investigation

The products covered by this investigation are aluminum extrusions from the PRC. For a full description of the scope of the investigation, please *see* "Scope of Investigation," in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, May 10, 2010, which is twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of aluminum extrusions to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics; and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe aluminum extrusions, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above–referenced address by May 10, 2010. Additionally, rebuttal comments must be received by May 17, 2010.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that aluminum extrusions constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Aluminum Extrusions from the People's Republic of China ("Checklist"), at Attachment II, Industry Support, on file in the Central Records Unit, Room 1117 of the main Department of Commerce building.

In determining whether Petitioners have standing under section

732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigations" section above. To establish industry support, Petitioners provided their production of the domestic like product in 2009. *See* Volume I of the Petition at Exhibit I–3. In addition Petitioners provided letters of support from ten additional companies that produce the domestic like product. *See id*. Petitioners compared their production and the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petition at 3–4 and Exhibits I–3 and I–4. Petitioners estimated total industry production of the domestic like product for 2009 using industry wide shipment data from the Aluminum Association, which according to Petitioners is "an independent and authoritative source for aluminum industry data." *See* Volume I of the Petition, at 3. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Checklist at Attachment II.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* Section 732(c)(4)(D) of the Act, and Checklist at Attachment 2. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See id*.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C), (D), and (F) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department initiate. *See id*.

Allegations and Evidence of Material Injury and Causation

Petitioners alleged that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, Petitioners alleged that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contended that the industry's injured condition is illustrated by reduced market share, increased raw material cost, declining capacity, production, shipments, underselling and price depression or suppression, reduced employment, hours worked, and wages paid, declines in financial performance, lost sales and revenue, and an increase in import penetration. *See* Volume I of the Petition, at 16, 19–27, 30–33, and Exhibits I–10 through I–15, III–33; and Supplement to AD/CVD Petitions, dated April 9, 2010, at 8–9, and Attachment 4. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Checklist at Attachment III.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of aluminum extrusions from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the initiation checklist. *See* Checklist.

U.S. Price

Petitioners calculated export price ("EP") based on documentation of offers for

sale obtained from a confidential source. *See* Checklist; *see also* Volume II of the Petition, at 1 and Exhibits II–1 and II–2. Based on the terms of sale, Petitioners adjusted the export price for brokerage and handling and foreign domestic inland freight. *See* Checklist; *see also* Volume II of the Petition, at 1–2 and Exhibits II–2 and II–3.

Normal Value

Petitioners claim the PRC is a non–market economy ("NME") country and that no determination to the contrary has been made by the Department. *See* Volume II of the Petition, at 2. In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market–economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners contend that India is the appropriate surrogate country for the PRC because: 1) it is at a level of economic development comparable to that of the PRC and 2) it is a significant producer and exporter of comparable merchandise. *See* Volume II of the Petition, at 3–5, and Exhibits II–4 and II–16. Based on the information provided by Petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners calculated NV and the dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. In calculating NV, Petitioners based the quantity of each of the inputs used to manufacture aluminum extrusions in the PRC on product–specific production costs and/or consumption rates of an aluminum extrusions producer in the United States ("Surrogate Domestic Producer") for identical or similar merchandise during the POI. *See* Volume II of the Petition, at 5–8 and Exhibits II–2, II–6, II–7 and

II–9. Petitioners state that the actual usage rates of the foreign manufacturers of aluminum extrusions are not reasonably available; however, Petitioners note that according to the information available, the production of aluminum extrusions relies on similar production methods to the Surrogate Domestic Producer. *See* Volume II of the Petition, at 5 and Exhibit II–8.

As noted above, Petitioners determined the consumption quantities of all raw materials based on the production experience of the Surrogate Domestic Producer. Petitioners valued most of the factors of production based on reasonably available, public surrogate country data, specifically, Indian import statistics from the Global Trade Atlas ("GTA"). *See* Volume II of the Petition, at 6–8; *see also* Second Supplement to the AD Petition, at Exhibit S–2. Petitioners excluded from these import statistics imports from countries previously determined by the Department to be NME countries. Petitioners also excluded import statistics from Indonesia, the Republic of Korea, and Thailand, as the Department has previously excluded prices from these countries because they maintain broadly available, non–industry-specific export subsidies. *See* Second Supplement to the AD Petition, at Exhibit S–2. Petitioners valued certain other factors of production using price data obtained from the Bombay Metal Exchange, as published by Reuters India. *See* Volume II of the Petition, at 7, and Second Supplement to the AD Petition, at Exhibit S–1. In addition, Petitioners made currency conversions, where necessary, based on the POI–average rupee/U.S. dollar exchange rate, as reported on the Department's web site. *See* Volume II of the Petition, at 7 and Exhibit II–11. Petitioners determined labor costs using the labor consumption, in hours, derived from the Surrogate Domestic Producer's experience. *See* Volume II of the Petition, at 7 and Exhibits II–6 and II–9. Petitioners valued labor costs using the Department's NME Wage Rate for the PRC at http://ia.ita.doc.gov/wages/07wages/final/final–2009–2007–wages.html. *See* Volume II of the Petition, at 7 and Exhibit II–13. For purposes of initiation, the Department determines that the surrogate values used by Petitioners are reasonably available and, thus, acceptable for purposes of initiation.

Petitioners determined electricity costs using the electricity consumption, in kilowatt hours, derived from the Surrogate Domestic Producer's experience. *See* Volume II of the Petition, at 7 and Exhibit II–14; see also Supplement to the AD Petition at Exhibit S–3. Petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India. *See* Supplement to the AD Petition, at 7 and Exhibit S–3. Petitioners determined natural gas costs using the natural gas consumption, in million British thermal units ("mmBtu"), derived from the Surrogate Domestic Producer's experience. *See* Volume II of the Petition, at 8, and Exhibit II–6 and II–9. Petitioners valued natural gas using the same methodology the Department used in the recent initiation of *Certain Coated Paper Suitable for High–Quality Print Graphics Using Sheet–Fed Presses from Indonesia and the People's Republic of China*, which was based on Indian import statistics. *See* Volume II of the Petition, at 8 and Exhibit II–15.

Petitioners determined packing costs using data from the GTA, derived from the Surrogate Domestic Producer's experience. *See* Volume II of the Petition, at Exhibit II–6; *see also* Supplement to the AD Petition, at 4 and Exhibits S–4 and S–6.

Petitioners based factory overhead, selling, general and administrative expenses, and profit on data from Jindal Aluminium, Ltd., a producer of aluminum extrusions, for the 2008 2009 fiscal year. *See* Volume II of the Petition, at 8 and Exhibit II–16.

Fair–Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of aluminum extrusions from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, as described above, the estimated dumping margins for aluminum extrusions from the PRC range from 32.57 percent to 33.32 percent. See Checklist and Second Supplement to the AD Petition at Exhibit S–2.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on aluminum extrusions from the PRC, the Department finds the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of aluminum extrusions from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008). The Department stated that "withdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area." *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegation is due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

For this investigation, the Department will request quantity and value information from known exporters and producers identified with complete contact information in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate–rate application by the respective deadlines in order to receive consideration for separate–rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration web site at http://ia.ita.doc.gov/ia–highlights-and–news.html, and a response to the quantity and value questionnaire is due no later than May 11, 2010. Also, the

Department will send the quantity and value questionnaire to those PRC companies identified in the Petition in Volume I of the Petition, at Exhibit I–8.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's web site at http://ia.ita.doc.gov/apo.

Separate Rates Application

In order to obtain separate–rate status in NME investigations, exporters and producers must submit a separate–rate status application. *See* Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries, dated April 5, 2005 ("Policy Bulletin"), available on the Department's web site at http://ia.ita.doc.gov/policy/bull05–1.pdf. Based on our experience in processing the separate–rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See, e.g., Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off–the-Road Tires From the People's Republic of China*, 72 FR 43591, 43594–95 (August 6, 2007). The specific requirements for submitting the separate–rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's web site at http://ia.ita.doc.gov/ia–highlights-and–news.html on the date of publication of this initiation notice in the **Federal Register**. The separate–rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate–rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate–rate status.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Policy Bulletin states:

> {}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin at 6 (emphasis added).

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than May 17, 2010, whether there is a reasonable indication that imports of aluminum extrusions from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Attachment I

Scope of the Investigations

The merchandise covered by these investigations is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four–digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion ("drawn aluminum") are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include,

but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright–dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut–to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes aluminum extrusions that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise.

Subject extrusions may be identified with reference to their end use, such as heat sinks, door thresholds, or carpet trim. Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are finished products and ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors, picture frames, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "kit." A kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope in this proceeding is dispositive.

[FR Doc. 2010–9743 Filed 4–26–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–968)

Aluminum Extrusions from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

EFFECTIVE DATE: April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Tran and Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1503 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2010, the Department of Commerce ("Department") received a countervailing duty ("CVD") petition concerning imports of certain aluminum extrusions from the People's Republic of China ("PRC") filed in proper form by the Aluminum Extrusions Fair Trade Committee[1] and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, "Petitioners"). *See* The Petitions for the Imposition of Antidumping and Countervailing Duties Against Aluminum Extrusions from the People's Republic of China, dated March 31, 2010 (the Petition). On April 6, 2010, the Department issued requests to Petitioners for additional information and for clarification of certain areas of the Petition. Based on the Department's requests, Petitioners filed a supplement to the Petition, regarding general issues, on April 9, 2010 ("Supplement to the AD/CVD Petitions").

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended ("Act"), Petitioners allege that producers/exporters of aluminum extrusions from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties, as defined in section 771(9)(C),(D), and (F) of the Act, and have demonstrated sufficient industry support with respect to the investigation that they request the Department to initiate (*see* "Determination of Industry Support for the Petition" below).

Period of Investigation

The period of investigation is January 1, 2009, through December 31, 2009.

Scope of Investigation

The products covered by this investigation are aluminum extrusions from the PRC. For a full description of the scope of the investigation, please *see* the "Scope of the Investigation" in Appendix I of this notice.

[1] The individual members of the Aluminum Extrusions Fair Trade Committee are Aerolite Extrusion Company, Alexandria Extrusion Company, Benada Aluminum of Florida, Inc., William L. Bonnell Company, Inc., Frontier Aluminum Corporation, Futura Industries Corporation, Hydro Aluminum North America, Inc., Kaiser Aluminum Corporation, Profile Extrusion Company, Sapa Extrusions, Inc., and Western Extrusions Corporation.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage of the scope. The Department encourages all interested parties to submit such comments by May 10, 2010, twenty calendar days from the signature date of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of the scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on April 1, 2010, the Department invited representatives of the Government of the PRC (GOC) for consultations with respect to the CVD petition. On April 12, 2010, the Department held consultations with representatives of the GOC via conference call. *See* Ex–Parte Memorandum on Consultations regarding the Petition for Imposition of Countervailing Duties on Aluminum Extrusions from the People's Republic of China. Further discussions were held with representatives of the GOC on April 19, 2010. *See* Ex–Parte Memorandum on Meeting with Ambassador Zhang Yesui.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that aluminum extrusions constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Aluminum Extrusions from the PRC ("Initiation Checklist") at Attachment II, dated concurrently with this notice and on file in the Central Records Unit, Room 1117 of the main Department of Commerce building.

In determining whether Petitioners have standing, under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, Petitioners provided their production of the domestic like product in 2009. *See* Volume I of the Petition at Exhibit I–3. In addition, Petitioners provided letters of support from ten additional companies that produce the domestic like product. *See id*. Petitioners compared their production and the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petition at 3–4 and Exhibits I–3 and I–4. Petitioners estimated total industry production of the domestic like product for 2009 using industry–wide shipment data from the Aluminum Association, which according to Petitioners is "an independent and authoritative source for aluminum industry data." *See* Volume I of the Petition, at 3. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Checklist at Attachment II.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 702(c)(4)(D) of the Act and Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the

production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See id.*

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C),(D) and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. *See id.*

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that imports of aluminum extrusions from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing aluminum extrusions. In addition, Petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, increased raw material cost, lost sales, declining capacity, production, shipments, underselling and price depression or suppression, reduced employment, hours worked, and wages paid, declines in financial performance, lost sales and revenue, and an increase in import penetration. *See* Volume I of the Petition, at 16, 19–27, 30–33, and Exhibits I–10 through I–15, III–33, and Supplement to AD/CVD Petitions, dated April 9, 2010, at 8–9, and Attachment 4. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations.

The Department has examined the Petition on aluminum extrusions from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of aluminum extrusions in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Preferential Loans and Interest Rates
  1. Policy Loans to the Aluminum Extrusion Producers
  2. Loans and Interest Subsidies Provided Pursuant to the Northeast Revitalization Program

B. Income Tax Programs
  1. Tax Exemptions for "Productive" FIEs (Two Free, Three Half)
  2. Provincial Tax Exemptions and Reductions for "Productive" FIEs
  3. Tax Reductions for FIEs Purchasing Chinese–Made Equipment
  4. Tax Reductions for FIEs in Designated Geographic Locations
  5. Tax Reductions for Technology- or Knowledge- Intensive FIEs
  6. Tax Reductions for FIEs that are also HNTEs
  7. Tax Reductions for HTNEs Involved in Designated Projects
  8. Tax Offsets for Research and Development at FIEs
  9. Tax Credits for Domestically Owned Companies Purchasing Chinese–Made Equipment
  10. Tax Reductions for Export–Oriented FIEs
  11. Tax Refunds for Reinvestment of FIE Profits in Export–Oriented Enterprises
  12. Accelerated Depreciation for Enterprises Located in the Northeast Region
  13. Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China

C. Other Tax Programs
  1. VAT and Tariff Exemptions on Imported Equipment
  2. VAT Rebates on FIE Purchases of Chinese–Made Equipment
  3. City Tax and Surcharge Exemptions for FIEs
  4. Exemptions from Administrative Charges for Companies in Zhaoqing High-Tech Industry Development Zone

D. Grant Programs
  1. The State Key Technology Renovation Project Fund
  2. "Famous Brands" Awards
  3. Grants to Cover Legal Fees in Trade Remedy Cases in Shenzhen
  4. Special Fund for Energy Saving Technology Reform: Guangdong Province
  5. The Clean Production Technology Fund
  6. Grants for Listing Shares: Liaoyang City (Guangzhou Province), Wenzhou Municipality (Zhejiang Province), and Quanzhou Municipality (Fujian Province)
  7. The Northeast Region Foreign Trade Development Fund
  8. The Northeast Region Technology Reform Fund

E. Government Provision of Goods or Services For Less Than Adequate Remuneration ("LTAR")
  1. Land Use Rights in the Liaoyang High–Tech Industry Development Zone
  2. Allocated Land Use Rights for SOEs
  3. Primary Aluminum

F. Government Purchase of Goods For More Than Adequate Remuneration ("MTAR")

For further information explaining why the Department is investigating these programs, *see* Initiation Checklist.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

A. Debt Forgiveness of Asia Aluminum

Petitioners allege that the GOC allowed managers of Asia Aluminum to buy the company's assets free of certain obligations and prohibited the original debt holders from enforcing their legal rights, thus effectively mandating forgiveness of the company's debt. Petitioners fail to establish a financial contribution by the government for the alleged debt forgiveness. The facts presented do not demonstrate that there was a financial contribution on the part of the government. Consequently, we do not plan on investigating this program.

B. Debt–to-Equity ("D/E") Swaps for Companies in the Aluminum Sector

Petitioners allege that the China Development Bank and two state–owned asset management corporations traded approximately 3.4 billion renminbi ("RMB") of debt owed by Aluminum Corporation of China and additional debt owed by Pinguo Aluminum for equity in the companies. The D/E swaps detailed by Petitioners occurred prior to the December 11, 2001, cut–off date that the Department uses for investigating subsidies in the PRC. Consistent with recent CVD determinations, we continue to find that it is appropriate and administratively desirable to identify a uniform date from which the Department will identify and measure subsidies in the PRC for purposes of the CVD law, and have adopted December 11, 2001, the date on which the PRC became a member of the WTO, as that date.[2] Therefore, Petitioners have not provided the Department with a factual basis to conclude that D/E swaps conferring benefits to producers of aluminum extrusion occurred in the period in which the Department will identify and measure subsidies in the PRC for purposes of the CVD law. Consequently, we do not plan on investigating this program.

C. Tax Exemptions and Reductions for Enterprises that Utilize Recycled Materials

Petitioners allege that, as reported to the WTO, the GOC has implemented a program to assist companies that recycle. Petitioners fail to establish that any subsidies under the program are specific. In particular, they do not support their contention that the program is limited to an enterprise or industry or group of enterprises or industries. Consequently, we do not plan on investigating this program.

D. The State Science and Technology Support Scheme

According to Petitioners, this program provides grants to promote research aimed at resolving scientific or technological problems regarding economic and social development. The Department finds there is insufficient evidence to establish specificity for this program. While Petitioners allege that recipients of benefits under this program are selected based on the GOC's designation of certain industries for development, the evidence provided does not support this claim. Consequently, we do not plan on investigating this program.

We are deferring a decision on whether to initiate an investigation of the following programs:

A. Land Use Rights Conferred to Asia Aluminum

Petitioners assert that the Zhaoqing City High–Tech Development Zone allowed aluminum producer Asia Aluminum to acquire land use rights for 50 years, and then later, the Development Zone returned the payment to Asia Aluminum because of the company's construction of infrastructure. The Department will decide whether to initiate this allegation only if Asia Aluminum is selected as a respondent.

B. Currency Undervaluation

Petitioners allege that the GOC intervenes in the foreign exchange market by buying dollars and artificially bidding up their value to ensure that the RMB/dollar exchange rate understates the value of the RMB vis a vis the dollar. The Department has carefully considered the currency allegation, which is similar to an allegation currently under consideration in the pending coated paper countervailing duty investigation from the PRC. At this time, given the unique nature of the alleged subsidy and the complex methodological issues that it raises under the CVD law, the Department has determined that additional study of the allegation is appropriate before an initiation decision may be made.

Respondent Selection

For this investigation, the Department expects to select respondents based on CBP data for U.S. imports during the period of investigation. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the Government of the PRC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition is filed, whether there is a reasonable indication that imports of subsidized aluminum extrusions from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

April 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Attachment I

Scope of the Investigations

The merchandise covered by these investigations is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four–digit alloy series without either a decimal point or

[2] *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009)("KASR from the PRC"), and accompanying IDM at Comment 3.

leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060.

Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion ("drawn aluminum") are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including bright–dip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut–to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, etc.), fabricated, or any combination thereof.

Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes aluminum extrusions that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise.

Subject extrusions may be identified with reference to their end use, such as heat sinks, door thresholds, or carpet trim. Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are finished products and ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight.

The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors, picture frames, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "kit." A kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States ("HTS"): 7604.21.0000, 7604.29.1000, 7604.29.3010, 7604.29.3050, 7604.29.5030, 7604.29.5060, 7608.20.0030, and 7608.20.0090. The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99 as well as under other HTS chapters. While HTS subheadings are provided for convenience and customs purposes, the written description of the scope in this proceeding is dispositive.

[FR Doc. 2010–9742 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 222, Room A242, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–2649, fax 301–975–3482, or e-mail: *nathalie.rioux@nist.gov.* Any request for information should include the NIST Docket number or Patent number and title for the invention as indicated below. The invention available for licensing is:

[NIST Docket Number: 06–011CIP]

Title: Gradient Elution Electrophoresis and Detectorless Electrophoresis Apparatus.

Abstract: A microfluidic apparatus and method for performing electrophoretic separation of compounds. The apparatus comprises: (a) A first container for containing a sample fluid; (b) a second container for containing a separation buffer fluid; (c) a channel of a first length having an inlet end and an outlet end, the inlet end connected to the first container and the outlet end connected to the second container; (d) a voltage device electrically connected to the first container and the second container, the voltage device facilitating adjustment of the amount of voltage to the first container and the second container; (e) a controller for controlling the velocity flow of the sample fluid through the channel from the first container towards the second container; and (f) a measuring device for measuring the current through the channel. The method comprises the steps of: (a) Providing a separation buffer; (b) providing a sample solution in fluid contact with the separation buffer; (c)

applying an electric field to the separation buffer; and (d) producing a variable bulk flow of the separation buffer in a direction substantially aligned with said electric field. Fluid contact between the separation buffer and the sample solution is made through a separation column having a length in the range of from approximately .01 mm to approximately 5 mm. By the foregoing, compounds can be sequentially detected and quantified.

Dated: April 21, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–9747 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW08

Marine Mammals; File No. 14245

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, National Marine Mammal Laboratory (NMML), Alaska Fisheries Science Center, (Dr. John Bengtson, Responsible Party), 7600 Sand Point Way, NE, Seattle, Washington 98115–6349, has applied in due form for a permit to conduct scientific research in the Pacific, Southern, Atlantic, and Arctic Oceans on 33 cetacean species, including endangered blue (*Balaenoptera musculus*), sei (*B. borealis*), fin (*B. physalus*), sperm (*Physeter macrocephalus*), North Pacific right (*Eubalaena japonica*), bowhead (*Balaena mysticetus*), humpback (*Megaptera novaeangliae*), Southern Resident killer (*Orcinus orca*), and Cook Inlet beluga (*Delphinapterus leucas*) whales.

DATES: Written, telefaxed, or e-mail comments must be received on or before May 27, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14245 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed below. Comments may also be submitted by facsimile to (301)713–0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include File No. 14245 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed below. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The NMML requests a five-year permit to conduct research on marine mammals in the Pacific, Southern, Atlantic, and Arctic Oceans to monitor cetaceans for scientific and management purposes. NMML would conduct ongoing projects designed to collect multi-year data to evaluate trends, abundance and distribution of whales and dolphins over long periods of time. Research activities would include aerial and vessel surveys, biopsy sampling, tagging, captures and a suite of sampling procedures associated with captures. Aerial and vessel surveys would be conducted for abundance estimation and distribution using line transect survey methods, photo-identification surveys, feeding studies, and searching for target species for feeding, biopsy and tagging studies. Eight pinniped species, including endangered Steller sea lions (*Eumetopias jubatus*), could be incidentally harassed during aerial surveys below 1,000 ft. Biopsy sampling would be conducted in conjunction with photo-identification surveys and tagging projects and during dedicated biopsy projects. Individuals may sampled up to four times annually for studies on distribution and prey choices. Transmitters would be attached using various methods to investigate cetacean movements and habitat use. Beluga whales, Dall's porpoises (*Phocoenoides dalli*), and harbor porpoises (*Phocoena phocoena*) would be captured for health assessments, attachment of satellite and/or VHF telemetry tags, and released. Over the life of the permit, capture activities may result in the unintentional deaths of four beluga whales from each non-listed stock and four animals from each species of porpoise. Capture research would be suspended and reviewed if four beluga whales, all stocks combined, die in a single year. NMFS is not permitting capture activities or mortality of endangered Cook Inlet beluga whales at this time, but is analyzing the impacts of these activities under the National Environmental Policy Act and the ESA in the event that these activities are considered in the future. The NMML also requests the salvage and import/export of cetacean parts, specimens, and biological samples collected during these projects.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

Dated: April 21, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–9731 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2010–0038]

Notice of Roundtables and Request for Comments on Enhancement in the Quality of Patents and on United States Patent and Trademark Office Patent Quality Metrics

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO), in conjunction with the Patent Public Advisory Committee (PPAC), has undertaken a project related to enhancing overall patent quality. As part of this initiative, the USPTO is conducting two roundtables to obtain public input from organizations and individuals on actions that can improve patent quality and the metrics the USPTO should use to measure progress. The roundtables are open to the public. The USPTO plans to invite a number of roundtable participants from among patent user groups, practitioners, industry, independent inventor organizations, academia, and government. Any member of the public may submit written comments on USPTO patent quality enhancement and metrics as well as on any issue raised at the roundtable.

DATES: The first roundtable will be held on Monday, May 10, 2010, beginning at 1 p.m. Pacific Daylight Time (PDT) and ending at 5 p.m. PDT.

The second roundtable will be held on Tuesday, May 18, 2010, beginning at 8:30 a.m. Eastern Daylight Time (EDT) and ending at 12 noon EDT.

The deadline for receipt of written comments is June 18, 2010.

ADDRESSES: The first (May 10, 2010) roundtable will be held at the Los Angeles Public Library—Central Library, which is located at 630 W. 5th Street, Los Angeles, California 90071.

The second (May 18, 2010) roundtable will be held at the USPTO in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, Virginia 22314.

Written comments should be sent by electronic mail message over the Internet addressed to *patent_quality_comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Elizabeth L. Dougherty. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written comments and list of the roundtable participants and their associations will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Dougherty, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7733, by electronic mail message at *elizabeth.dougherty@uspto.gov.*

SUPPLEMENTARY INFORMATION: The USPTO in conjunction with the PPAC has undertaken a project related to overall patent quality. As part of that effort, a notice was published soliciting comments from the public on means to enhance quality of the patent process with particular emphasis on the search, examination, application and methods of meaningfully measuring such enhanced quality. *See Request for Comments on Enhancement in the Quality of Patents,* 74 FR 65093 (Dec. 9, 2009) (Patent Quality Request for Comments). In the Patent Quality Request for Comments, the USPTO stated that it would like to focus, *inter alia,* on improving the process for obtaining the best prior art, preparation of the initial application, and examination and prosecution of the application. The USPTO sought public comment directed to this focus with respect to methods that may be employed by applicants and the USPTO to enhance the quality of issued patents, to identify appropriate indicia of quality, and to establish metrics for the measurement of the indicia. The original comment period was extended to March 8, 2010. *See Extension of Period for Comments on Enhancement in the Quality of Patents,* 75 FR 5040 (Feb. 1, 2010).

The comments may be viewed on the USPTO's Web site at *http://www.uspto.gov/patents/law/comments/patentqualitycomments.jsp.* A summary of the comments, prepared by the PPAC, as well as a summary of the comments and responses prepared by the USPTO, is included for the participants to review and will be posted on the USPTO's Web site at *http://www.uspto.gov/patents/init_events/patentquality.jsp.*

As a part of this initiative, the USPTO is conducting two roundtables, one at the Los Angeles Public Library—Central Library facility, and one at the USPTO, to obtain public input from organizations and individuals on patent quality and USPTO patent quality metrics. The number of participants in each roundtable is limited to ensure that all who are speaking will have a meaningful chance to do so. The USPTO plans to invite participants from patent user groups, practitioners, industry, independent inventor organizations, academia, and government. The roundtables are open to the public.

The USPTO will provide an agenda, list of participants, and preparatory materials to the participants prior to the roundtable in order to focus the discussion and enhance the efficiency of the proceedings. All such materials will be posted on the USPTO's Internet Web site. The USPTO plans to make the roundtable held at the USPTO on May 18, 2010, available via Web cast; efforts are being made to also make the roundtable held at the Los Angeles Public Library–Central Library facility available via Web cast if reasonably possible. Web cast information will be available before the roundtable on the USPTO's Internet Web site. The written materials for the roundtable, any slides or handouts distributed at the roundtable, and the list of the roundtable participants for each roundtable and their associations will also be posted on the USPTO's Internet Web site. The USPTO patent quality metrics under consideration will be posted on the USPTO's Web site at *http://www.uspto.gov/patents/init_events/patentquality.jsp.*

The patent quality metrics posted on the USPTO's Web site have been presented to facilitate a discussion on patent quality metrics and should not be taken as an indication that the USPTO has predetermined that it will adopt these patent quality metrics or that the USPTO is not interested in suggestions that the USPTO consider other patent quality metrics. The USPTO is inviting written comments from any member of the public on USPTO patent quality metrics as well as on any issue raised at the roundtable.

Dated: April 23, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–9851 Filed 4–26–10; 8:45 am]

BILLING CODE 3510–16–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket Number: 100416189–0189–01]

Request for Public Comment on the Scope of Viewpoints Represented on the Industry Trade Advisory Committees

AGENCIES: Office of the United States Trade Representative and U.S. Department of Commerce, International Trade Administration.

ACTION: Notice, request for public comment.

SUMMARY: The Office of the United States Trade Representative (USTR) and the Department of Commerce have initiated a joint review of the Industry Trade Advisory Committee (ITAC) component of the trade advisory committee system. As part of this joint review, USTR and Commerce are seeking comments and suggestions from the public on the appropriate scope of representation on the ITACs.

DATES: Written comments are due by 5 p.m. Eastern Standard Time (EST) on May 25, 2010.

ADDRESSES: You may send comments identified by Docket Number ITA–2010–0001, using any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Please see the **SUPPLEMENTARY INFORMATION** for more information and instructions for sending your comments electronically.
- For alternatives to online submission please contact Ingrid Mitchem, Director, Industry Trade Advisory Center, at (202) 482–3268.

FOR FURTHER INFORMATION CONTACT: Questions regarding this request for comments should be directed to Ingrid Mitchem, Director, Industry Trade Advisory Center, at (202) 482–3268.

SUPPLEMENTARY INFORMATION:

Background

Section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), directed the President to obtain information and advice from representative elements of the private sector and the non-Federal government sector regarding U.S. trade policy and trade negotiation objectives. Among other mechanisms, Section 135(c)(2) of the 1974 Trade Act provides:

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) Consult with interested private organizations; and

(B) Take into account such factors as—

(i) Patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) The character of the non-tariff barriers and other distortions affecting such competition,

(iii) The necessity for reasonable limits on the number of such advisory committees,

(iv) The necessity that each committee be reasonably limited in size, and

(v) In the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

The accompanying legislative history indicated that the sectoral and functional committees were to "be representative of the producing sectors of our economy" to "strengthen the hand of U.S. negotiators by improving their knowledge and familiarity with the problems domestic producers face in obtaining access to foreign markets." S. Rep. 1298, 93d Cong., 2d Sess. 102 (1974).

Pursuant to Presidential delegation of this authority, USTR and Commerce have established and co-chair sixteen ITACs, plus an ITAC Committee of Chairs. The ITACs provide information and advice addressing the concerns of specific industry sectors for use by the USTR and the Secretary of Commerce in developing U.S. trade policy and negotiating positions.

To date, USTR and Commerce, with minor exceptions, have limited the viewpoints represented on the ITACs to those of industry stakeholders based on the need to obtain technical and detailed sectoral advice from the representatives of the producing sectors and the existence of other fora within the USTR-administered trade advisory committee system which provide for advice from representatives of other viewpoints, such as the Trade and Environment Policy Advisory Committee, the Intergovernmental Policy Advisory Committee on Trade, the Labor Advisory Committee for Trade Negotiations and Trade Policy, and the Trade Advisory Committee on Africa. USTR and Commerce both have received multiple inquiries recently regarding the appropriate viewpoints to be represented on the ITACs. As a result of those inquiries, in accordance with Section 135(c)(2)(A) of the 1974 Trade Act, USTR and Commerce have decided to seek comments from the public on the appropriate scope of viewpoints represented on the ITACs.

In submitting comments regarding what viewpoints should be represented, please address: How the proposed viewpoint would improve the quality of information and advice provided to the Secretary and the USTR through the ITACs; how the proposed specific perspective would add value and contribute to the ITACs' mission to provide information and advice addressing the concerns of specific industry sectors to assist the USTR and the Secretary in developing U.S. trade policy and negotiating positions; how such viewpoints could be effectively incorporated into the existing ITAC structure (i.e., on which specific ITAC would that viewpoint be appropriate); and whether such viewpoints may be more effectively incorporated into other fora within the trade advisory system. (Further information on trade advisory committees is available at *http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees/*).

General information concerning the Industry Trade Advisory Committees, including a list of the subject areas of the sixteen ITACs, is available at *http://www.trade.gov/itac/.*

Requirements for Submission

Written comments must be received by 5 p.m. EST on May 25, 2010. In order to ensure the most timely and expeditious receipt and consideration of comments, USTR and Commerce have arranged to accept on-line submissions via *www.regulations.gov.* To submit comments via *www.regulations.gov,* enter docket number ITA–2010–0001 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search results page, and click on the link entitled "Send a Comment or Submission." For further information on using the *http://www.regulations.gov/* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.

The *www.regulations.gov* Web site provides the option of making submissions by filling in a "General Comments" field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type "*See attached*" in the "General Comments" field.

We strongly urge submitters to avail themselves of the electronic filing, if at all possible. If an on-line submission is impossible, alternative arrangements must be made with Ms. Mitchem, Director, Industry Trade Advisory Center, at (202) 482–3268, prior to delivery for the receipt of such submissions. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*). General information concerning the Department of Commerce may be obtained by accessing its Internet Web site (*http://www.commerce.gov*).

Dated: April 20, 2010.

Nicole Y. Lamb-Hale,

Assistant Secretary for Manufacturing and Services, U.S. Department of Commerce.

Dated: April 19, 2010.

Myesha Ward,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Engagement.

[FR Doc. 2010–9650 Filed 4–26–10; 8:45 am]

BILLING CODE 3190–DR–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 May 27, 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: April 21, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Private School Universe Survey (PSS) 2010–13.

Frequency: Biennially.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 15,867.

Burden Hours: 3,186.

Abstract: Since 1989, the Private School Universe Survey (PSS) provides biennially an accurate and complete list of all private schools in the U.S., along with a variety of related data, including: religious orientation; grade-levels taught and size of school; length of school year and of school day; total student enrollment by gender (K–12); number of high school graduates; whether a school is single-sexed or coeducational; number of teachers employed; program emphasis; and existence and type of its kindergarten program. PSS includes all schools that are not supported primarily by public funds, provide classroom instruction for one or more of grades K–12 or comparable ungraded levels, and have one or more teachers. No substantive changes have been made to the survey or its procedures since its last approved administration.

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 4230. 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. 2010–9718 Filed 4–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 12478–003]

Gibson Dam Hydroelectric Company, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 20, 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 Project—Existing Dam.

b. *Project No.:* P–12478–003.

c. *Date filed:* August 28, 2009.

d. *Applicant:* Gibson Dam Hydroelectric Company, LLC.

e. *Name of Project:* Gibson Dam Hydroelectric Project.

f. *Location:* On the Sun River, near the towns of Augusta and Fairfield, Lewis and Clark and Teton Counties, Montana. The project would occupy 95.34 acres of federal land administered by the U.S. Forest Service and 19.39 acres of federal land administered by the U.S. Bureau of

Land Management for a total of 114.73 acres of federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a)–825(r).

h. *Applicant Contact:* Steve C. Marmon, Thom A. Fischer, Whitewater Engineering Corporation, 3633 Alderwood Ave., Bellingham, WA 98225, (360) 738–9999.

i. *FERC Contact:* Matt Cutlip, phone: (503) 552–2762, e-mail: *matt.cutlip@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 facilities of the U.S. Bureau of Reclamation's Gibson Dam including the reservoir, existing valve house, and two existing dam outlet pipes; and would consist of the following new facilities: (1) Two new 72-inch-diameter penstocks extending 40 feet from the existing outlet pipes to the powerhouse; (2) a new powerhouse located near the toe of the dam with four turbine/generating units with total installed capacity of 15 megawatts; (3) a new 25.8-mile, 34.5/69 kV overhead and underground transmission line from the powerhouse to an interconnection point with Sun River Electric Cooperative, Inc.'s existing 69 kV transmission line at Jackson's Corner; (4) a new 34.5/69 kV step-up substation; (5) a new maintenance building located approximately 1,400 feet downstream of the powerhouse adjacent to existing Gibson Dam operations facilities; and (6) appurtenant facilities. The average annual generation is estimated to be 40 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. 2010–9686 Filed 4–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12632–002]

East Texas Electric Cooperative, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Other Agency Authorizations

April 20, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License—Existing Dam.

b. *Project No.:* P–12632–002.

c. *Date filed:* March 31, 2009.

d. *Applicant:* East Texas Electric Cooperative, Inc. (Cooperative).

e. *Name of Project:* Lake Livingston Hydroelectric Project.

f. *Location:* On the Trinity River, in San Jacinto, Polk, Trinity, and Walker Counties, Texas. The project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Edd Hargett, East Texas Electric Cooperative, Inc., 2905 Westward Drive, P.O. Box 631623, Nacogdoches, TX 75963; (936) 560–9532; *eddh@gtpower.com*.

i. *FERC Contact:* Sarah Florentino at (202) 502–6863, or *sarah.florentino@ferc.gov*.

j. The deadline for filing motions to intervene and protests is 60 days from the issuance date of this notice.

k. This application has been accepted for filing, but is not ready for

environmental analysis at this time. When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

l. *The proposed project would use the following existing facilities:* (1) The Trinity River Authority's (TRA) existing 14,400-foot-long (approximate) Lake Livingston dam, which has a crest elevation of 145.0 feet mean sea level (msl) and consists of (a) a basic earth embankment section, (b) outlet works, and (c) a spillway; and (2) the 83,000-acre Lake Livingston, which has a normal water surface elevation of 131.0 feet msl and gross storage capacity of 1,750,000 acre-feet.

The proposed project would consist of the following new facilities: (1) An intake structure and headrace channel approximately 300 feet long; (2) three steel penstocks, about 12 feet in diameter and 750 feet in length; (3) a powerhouse containing three generating units, having a total installed capacity of 24 megawatts; (4) an approximate 1,200-feet-long tailrace channel; (5) an approximate 2.8-mile-long, 138-kilovolt transmission line interconnecting the project with Entergy's existing Rich substation near Goodrich; and (6) an electric switchyard and other appurtenant facilities. The project would have an estimated annual generation of 124 gigawatt-hours, which the Cooperative would sell at wholesale to its constituent electric cooperatives.

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 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.

o. 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, .211, .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.

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 the representative of the applicant.

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 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.

p. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Issue Notice Soliciting Final Comments, Terms and Conditions, etc. May 2009.

Notice of Availability of the EA November 2010.

q. *Other Agency Authorizations:* A Texas Coastal Zone consistency certification is required for the Lake Livingston Project. The Cooperative certifies that the project is consistent with the Texas Coastal Management Program goals and policies and would be conducted in a manner consistent with said program. In addition, a Texas Commission on Environmental Quality (Texas CEQ) section 401 Water Quality Certification is required. As part of its processing of the license application, the Texas CEQ is reviewing the application under Section 401 of the Clean Water Act (CWA), and in accordance with Title 30, Texas Administrative Code Section 279.1–13, to determine if the work would comply with State water quality standards. Based on an understanding between the Federal Energy Regulatory Commission (FERC) and the Texas CEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the Texas CEQ a decision on the request for section 401 water quality certification for this FERC license application. Any comments concerning this certification request may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC–150, P.O. Box 13087, Austin, Texas 78711–3087. The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of work is made available for review in the Texas CEQ's Austin office. The complete application may be reviewed at the address listed in paragraph h. The Texas CEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application, a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how the certification, if

granted, would adversely affect such interest.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9687 Filed 4–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC10–73–000]

Trans-Union Interstate Pipeline, L.P.; Notice of Filing

April 20, 2010.

Take notice that on April 9, 2010 Trans-Union Interstate Pipeline, L.P. submitted a request for waiver of the requirement to submit the 2009 FERC Form No. 2–A under Sections 260.2 of the Commission regulations.

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 online 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: May 20, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9688 Filed 4–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM04–7–006]

Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; Notice of New Docket Prefix "LA" for Land Acquisition Reports and Guidelines for Filing Under Order No. 697–C

April 20, 2010.

Notice is hereby given that a new docket prefix "LA" has been established for 'Land Acquisition Reports' (LA Reports) filed by market-based utilities on a quarterly basis, pursuant to Order No. 697–C.[1]

In that Order, the Commission required that all market-based rate sellers must report on a quarterly basis the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated in the interconnection process and for which the potential number of megawatts that are reasonably commercially feasible on the site or sites for new generation capacity development is equal to 100 megawatts or more. If a Seller elects to make a monetary deposit so that it may demonstrate site control at a later time in the interconnection process, the monetary deposit will trigger the quarterly reporting requirement instead of the demonstration of site control. A notification of change in status that is submitted to report the acquisition of control of a site or sites for new generation capacity development must include:

(1) The number of sites acquired;

(2) The relevant geographic market in which the sites are located; and

(3) The maximum potential number of megawatts (MW) that are reasonably commercially feasible on the sites reported.

Each LA Report will now receive a new prefix "LA" as part of its designated docket number and will be enumerated quarterly so that the first quarterly filing received will be filed under LA10–1–000, the second quarterly filing will be filed under LA10–2–000 and so on. Accordingly, each quarter and year the LA docket number will change and the Commission will no longer sub-docket these reports under the formerly used "ER" docket prefixes that were used previously for these reports.

For 2010 filings, the docket numbers will appear as follows:

Docket No.	Periods covering	Date filed
LA10–1–000	First quarter of calendar year 2010	Filed in April 2010 for January–March 2010.
LA10–2–000	Second quarter of calendar year 2010	Filed in July 2010 for April–June 2010.
LA10–3–000	Third quarter of calendar year 2010	Filed in October 2010 for July–September 2010.
LA10–4–000	Fourth quarter of calendar year 2010	Filed in January 2011 for October–December 2010.

[1] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009).

Filing guidelines for the "LA" prefix are attached to this notice and will be posted on the Commission's Web site at *http://www.ferc.gov/help/how-to.asp*. The Commission encourages electronic filing of all LA reports.

Kimberly D. Bose,

Secretary.

Attachment—Filing Guidelines for "LA" Reports Under FERC Order No. 697–C

Reporting Requirements Under 18 CFR 35.42

Order No. 697–C established filing requirements for quarterly reports filed by an electric utility under 18 CFR 35.42.

This report should be submitted using the Commission's eFiling system. The content of each report must conform to the applicable regulation under which the report is filed. Filers are requested to select the applicable LA docket number(s) that correspond with the appropriate calendar quarter filed and also select all the former ER docket numbers that apply.

A FERC Online eRegistration account is a prerequisite for anyone submitting an electronic filing to FERC and anyone that will be identified during the eFiling process as a person responsible for the filing. Links to both eRegistration and eFiling are available on the Commission's Web site at: *http://www.ferc.gov/docs-filing/docs-filing.asp*.

[FR Doc. 2010–9684 Filed 4–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at WIRAB and CREPC Meetings

April 20, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

April 21–22, 2010

Committee on Regional Electric Power Cooperation (CREPC): DoubleTree, Lloyd Executive Center, 1000 NE Multnomah, Portland, OR 97232.

Further information may be found at: http://www.westgov.org/wieb/site/crepcpage/crepupco.htm.

April 21, 2010

Western Interconnection Regional Advisory Body (WIRAB): DoubleTree, Lloyd Executive Center, 1000 NE Multnomah, Portland, OR 97232.

Further information may be found at: http://www.westgov.org/wirab/site/upco.htm.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC08–4, North American Electric Reliability Corporation.
Docket No. RC08–5, North American Electric Reliability Corporation.
Docket No. RR08–4, North American Electric Reliability Corporation.
Docket No. RR09–6, North American Electric Reliability Corporation.
Docket No. RR09–7, North American Electric Reliability Corporation.
Docket No. RR10–6, North American Electric Reliability Corporation.
Docket No. RR10–7, North American Electric Reliability Corporation.
Docket No. RR10–8, North American Electric Reliability Corporation.
Docket No. RD09–4, North American Electric Reliability Corporation.
Docket No. RD09–5, North American Electric Reliability Corporation.
Docket No. RD09–7, North American Electric Reliability Corporation.
Docket No. RD09–8, North American Electric Reliability Corporation.
Docket No. RD09–11, North American Electric Reliability Corporation.
Docket No. RD10–2, North American Electric Reliability Corporation.
Docket No. RD10–3, North American Electric Reliability Corporation.
Docket No. RD10–4, North American Electric Reliability Corporation.
Docket No. RD10–5, North American Electric Reliability Corporation.
Docket No. RD10–6, North American Electric Reliability Corporation.
Docket No. RD10–8, North American Electric Reliability Corporation.

For further information, please contact John Carlson, 202–502–6288, or *john.carlson@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–9685 Filed 4–26–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9142–1]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Equivalent Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of one new equivalent method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR Part 53, one new equivalent method for measuring concentrations of ozone (O_3) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Surender Kaushik, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. *Phone:* (919) 541–5691, *e-mail: Kaushik.Surender@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR Part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR Part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR Part 58 by States and other agencies for determining compliance with the NAAQSs.

The EPA hereby announces the designation of one new equivalent method for measuring ozone (O_3) in the ambient air. This designation is made under the provisions of 40 CFR Part 53, as amended on November 12, 2008 (73 FR 67057–67059).

The new equivalent method for O_3 is an automated method that utilizes a measurement principle based on ultraviolet absorption photometry. The newly designated equivalent method for O_3 is identified as follows:

EQOA–0410–190, "2B Technologies Model 202 Ozone Monitor," enclosed in a 3.5″ x 8.3″ x 11.6″ case, operated in an environment of 10 − 40°C, with temperature/pressure compensation, using a 10 second average, 10 second display update, on-board backup sample pump, with a 110–220V AC power adapter or a 12V DC source such as a cigarette lighter adapter plugged into a 12V DC source or a 12V DC battery for portable operation, 4.0 watt power consumption, external TFE inlet filter and holder, serial data port with computer cable, BNC connector for 0–2.5V user scalable analog output, internal data logger, 3-analog inputs for external signals (such as temperature, relative humidity or pressure), rack mount hardware, internal DewLine for humidity control and operated according to the Model 202 Ozone Monitor Operation Manual.

The application for the equivalent method determination for this candidate method was received by the EPA on November 3, 2009. The monitor is commercially available from the applicant, 2B Technologies, Incorporated, 2100 Central Ave., Suite 105, Boulder, CO 80301.

A test monitor representative of this method has been tested in accordance with the applicable test procedures specified in 40 CFR Part 53, as amended on November 12, 2008. After reviewing the results of those tests and other information submitted in the application, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method for ozone. The information provided by the applicant will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.,* configuration or operational settings) specified in the applicable designated method description (*see* the identification of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R–94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program" EPA–454/B–08–003, December 2008 (available at *http://www.epa.gov/ttnamti1/files/ambient/pm25/qa/QA-Handbook-Vol-II.pdf).* Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR Part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.,* by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the technical aspects of the method should be directed to the applicant.

Dated: April 19, 2010.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. 2010–9756 Filed 4–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9142–3]

Notice of Data Availability Concerning 2010 CAIR NO_X Ozone Season Trading Program New Unit Set-Aside Allowance Allocations Under the Clean Air Interstate Rule Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: EPA is administering—under the Clean Air Interstate Rule (CAIR) Federal Implementation Plans (FIPs)—the CAIR NO_X Ozone Season Trading Program (CAIROS) new unit set-aside allowance pools for Delaware and the District of Columbia. The CAIROS FIPs require the Administrator to determine each year by order the allowance allocations from the new unit set-aside for units in these jurisdictions whose owners and operators requested these allocations and to provide the public with the opportunity to object to the allocation determinations. In this NODA EPA is making available to the public the emissions data and other information upon which the allocations, or denial of allocations, are based and the CAIROS new unit set-aside allowance allocation (if any) for each individual unit.

DATES: Objections must be received by May 27, 2010.

ADDRESSES: Submit your objections by one of the following methods:

A. *E-mail: CAIR_NOx_Ozone_;NUSA@epamail.epa.gov.*

B. *Mail:* Robert L. Miller, U.S. Environmental Protection Agency, CAMD (6204J), *Attn:* 2010 CAIROS New Unit Set-aside, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: If you submit an objection, include your name and other contact information in the body of your objection. If EPA is unable to read your objection and contact you for clarification due to technical difficulties, EPA may not be able to consider your objection. Electronic files should not have special characters and any form of encryption and should be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Robert L. Miller, U.S. Environmental Protection Agency, CAMD (6204J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9077, and e-mail *miller.robertl@epa.gov.* If mailing by courier, address package to Robert L. Miller, 1310 L St., NW., Room 254B, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

Outline

1. General Information
2. What is the purpose of this NODA?
3. What are the requirements and procedures for requesting and receiving 2010 CAIROS new unit set-aside allowances?
4. How is EPA applying to individual CAIROS units the requirements for requesting and receiving 2010 CAIROS new unit set-aside allowance allocations?

1. General Information

Does this action apply to me?

This NODA applies to CAIROS units in Delaware and the District of Columbia whose owners and operators requested on or before February 1, 2010 a 2010 CAIROS allowance allocation from the new unit set-aside.

What should I consider as I prepare and submit any objections for EPA?

When preparing and submitting an objection, remember to:

(1) Identify the source (facility name, plant code) and unit identification number for which the objection is being made;

(2) Make sure to submit your objection by the deadline identified.

If you e-mail your objection, put "Objection for 2010 CAIROS New Unit Set-aside" in the subject line to alert the Administrator that an objection is included. If mailing by courier, address the package to Robert L. Miller, 1310 L St., NW., Room 254B, Washington, DC 20005. Clearly mark any portion of the information that you claim to be CBI. For CBI 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Robert L. Miller, EPA Headquarters, CAMD (6204J), 1200 Pennsylvania Avenue, NW., Washington DC 20460.

2. What is the purpose of this NODA?

The purpose of this NODA is to make all of the data upon which the allocations or denial of allocations are based available to the public for objection to ensure that the data on which the applicable determination for each unit is based are correct. Any person objecting to any of the data should explain the basis for his or her objection, provide alternative data and supporting documentation, and explain why the alternative data are the best available data. EPA will consider any substantive objections to the data.

The provisions of § 97.342(c)—which govern the submission of requests for CAIROS allowance allocations from the new unit set-aside and set forth the criteria for qualification for, and the methodologies for calculating, such allocations for each individual unit—are final and are described in this NODA solely for informational purposes and are not open for objection. However, objections may be submitted concerning whether EPA determined, in a manner consistent with these rule provisions, the CAIROS allowance allocation (if any) from the new unit set-aside for 2010 for any unit for which such an allowance allocation was requested. *See* 40 CFR 97.341(d).

3. What are the requirements for requesting and receiving CAIROS new unit set-aside allowances and the procedures for allocating such allowances?

EPA is administering the 2010 CAIROS new unit set-aside allowance pools for Delaware and the District of Columbia, which are comprised of a maximum of 111 allowances for Delaware and 6 allowances for the District of Columbia. Under § 97.342(c)(2), the owners and operators of any unit for which CAIROS new unit set-aside allowances were sought for 2010 had to submit to EPA a request for CAIROS new unit set-aside allowance allocations by February 1, 2010. The owners and operators of a CAIROS unit in Delaware or the District of Columbia could request a CAIROS new unit set-aside allowance allocation if (1) the unit is subject to the CAIROS, (2) the unit is not allocated any CAIROS allowances under § 97.342(b) because it lacks a baseline heat input or because all CAIROS allowances available under § 97.342(b) for the year have already been allocated, and (3) the owners and operators of the unit submitted a timely request by the February 1, 2010 deadline. If a unit meets these criteria, EPA determines the allocation amount by determining the 2009 NO_X mass emissions data reported under 40 CFR part 75 for the unit during the 2009 ozone season (May 1—September 30, 2009). Finally, EPA makes any necessary adjustments under § 97.342(c)(4) to each such unit's allocation amount in order to ensure that the total amount of CAIROS new unit set-aside allowances allocated for 2010 does not exceed the amount of allowances in the new unit set-aside for 2010.

4. How is EPA applying to individual CAIROS units the requirements for requesting and receiving CAIROS new unit set-aside allowance allocations?

On January 21, 2010 EPA sent an e-mail—to the designated representatives, alternate designated representatives, and their respective agents of CAIROS units in the District of Columbia and Delaware—that provided instructions on the proper submission of a request for a CAIROS allowance allocation from the new unit set-aside for 2010. The January 21, 2010 e-mail explained what data should be submitted with the request and reminded addressees of the February 1, 2010 deadline for such requests. Among the data elements for a request under § 97.342(c)(2) were the number of allowances requested in an amount no greater than the unit's NO_X emissions for the 2009 ozone season (May 1 through September 30, 2009). EPA received timely requests for 2010 CAIROS new unit set-aside allowance allocations for 3 CAIROS units in Delaware; no requests were received for CAIROS units in the District of Columbia.

The detailed unit-by-unit data, allowance allocation determinations, and calculations are set forth in a technical support document, which is a single Excel spreadsheet titled "2010 CAIROS FIP New Unit Set-Aside Allocations Data" and is available on EPA's Web site at *http://www.epa.gov/airmarkets/cair/ozone_nusa/index.html.* EPA will publish a second NODA, after the 30-day period for submitting objections concerning this NODA, in order to address any objections and make any necessary adjustments to the data published in this NODA to ensure that EPA's allowance allocation determinations are in accordance with § 97.342(c). EPA will record, no later than September 1, 2010, CAIROS allowance allocations from the new unit set-aside for 2010 after publication of the second NODA. *See* 40 CFR 97.353(e).

Dated: April 19, 2010.

Brian McLean,

Director, Office of Atmospheric Programs.

[FR Doc. 2010–9754 Filed 4–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9142–4]

Notice of Availability of "Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2010 Appropriations Act"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing the availability of a memorandum entitled "Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2010 Appropriations Act." This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects identified in the State and Tribal Assistance Grants (STAG) account of the Agency's FY 2010 Appropriations Act (Pub. L. 111–88). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects. Each grant

recipient will receive a copy of this document from EPA.

ADDRESSES: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/cwfinance/cwsrf/law.htm.*

FOR FURTHER INFORMATION CONTACT: George Ames, (202) 564–0661 or *ames.george@epa.gov.*

Dated: April 16, 2010.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 2010–9758 Filed 4–26–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9142–5]

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 Falmouth, MA

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 Falmouth, Massachusetts for the purchase of a foreign manufactured wind turbine to be installed at its existing wastewater treatment facility site. 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 of Falmouth and its consulting engineer, it has been determined that there are currently no domestic manufactured wind turbines available to meet its proposed project design and performance specifications. 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 a foreign manufactured wind turbine by the Town of Falmouth, MA, as specified in its February 24, 2010 follow-up submittal.

DATES: *Effective Date:* April 19, 2010.

FOR FURTHER INFORMATION CONTACT: David Chin, Environmental Engineer, (617) 918–1764, or Katie Connors, 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 of Falmouth, Massachusetts for the purchase of a foreign manufactured wind turbine that meets the Town of Falmouth's design and performance specifications to be installed at its existing wastewater treatment facility site.

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 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 Falmouth, Massachusetts (MA) is proposing to construct a foreign manufactured Vestas model V82, 1.65 megawatt (MW) wind turbine generator at the Town's wastewater treatment facility located at 154 Blacksmith Shop Road, a 314 acre town owned site in Falmouth, MA. This proposed wind turbine would be the second one installed and commissioned at the site although the existing wind turbine was not funded through the ARRA. The Town of Falmouth is requesting a waiver for the purchase of a 1.65 MW wind turbine comprised of all turbine components, including, but not limited to: The blades, the nacelle (i.e. cover housing that holds the equipment within a wind turbine), the gear box, low and high speed shafts, generator, controller, and brake. The wind turbine is manufactured by Vestas of Denmark, and meets project design and performance specifications. The total estimated cost to furnish, install and commission the proposed wind turbine is approximately $4.3M.

Massachusetts is one of several northeast states that has a climate change action plan which calls for significant CO_2 emission reductions by 2020. Integral to that plan is a wider adoption of non-emitting renewable sources of electricity. Wind power is currently the most practical source of renewable energy to meet that goal. The Massachusetts' Renewable Portfolio Standard (RPS) requires an increasing amount of the electricity sold in the Commonwealth to come from renewable electricity, including wind power. RPS is also one of the major policy tools put in place to meet the CO_2 reduction goals under the climate change plan. This project, while small, would contribute towards achieving those goals. The proposed wind turbine is expected to generate an average of 3,075 MW hours of electricity annually, representing approximately 30% of the Town's total municipal building and facilities electrical needs.

The Town of Falmouth has thoroughly researched available domestic and foreign wind turbine manufacturers. According to the Town, there was only one domestic manufacturer that produces a wind turbine that appears to meet project design and performance specifications. However, the identified domestic manufacturer is not willing to supply a wind turbine for installation at the Falmouth Wastewater Treatment Plant, nor is it willing to support a warranty and service agreement for another available unit that it has already manufactured. According to the domestic manufacturer, the Town's proposed construction site would not meet the manufacturer's internal setback requirement distances to mitigate the risks associated with potential ice throws from the turbine blades. The domestic manufacturer's internal siting considerations recommended that, for safety in the event of icing, a setback distance of 1.5 times the hub height and rotor diameter—in this case, 646 feet—be maintained from occupied structures, roads, property lines and public access areas. The proposed wind turbine would be set back approximately 552 feet from the property line, 646 feet from the nearest public road (Route 28), and 1,150 feet from the nearest residential structure.

Thus, the siting would provide sufficient setback distances for the road

and residential structures but not the property line. The domestic manufacturer cited the setback distance to EPA's national contractor as the basis for its refusal to make its product available for this project. However, the domestic manufacturer's internal siting considerations also provided for other possible mitigation techniques for properties that do not meet these setback considerations, but the manufacturer did not offer to make its product available based on the potential application of such techniques at this site, notwithstanding that the setback limitations at this site were relatively minor, and can readily be addressed by mitigation techniques. (For example, while a road located within the desired setback distance cannot practically be moved and will present some continuing risk, a simple property line incursion within the setback distance can effectively be addressed by signs to provide notice of the risk during certain weather conditions.) The foreign manufacturer which has already supplied an identical 1.65 MW wind turbine that meets the technical specifications required by Falmouth at the site has agreed to supply another 1.65 MW wind turbine to Falmouth at the same site.

Based on information provided to the EPA, the Town of Falmouth has taken the necessary steps to obtain all required local, state, and federal approvals to move forward with the proposed project. The Town of Falmouth has adopted a local ordinance regulating large scale wind turbines. According to the submittal, Zoning Article XXXIV, Chapter 240, Section 240–166 requires a Special Permit for windmills with minimum setback from property lines. The setback requirements of the ordinance states that "On the lot of the petitioner there shall be an area sufficient so that a circle, the center of which shall be no less than the height of the tower as measured from the base of the tower to the uppermost of the blade, or tower, whatever is greater plus 10 feet, may be drawn and be completely within the petitioner's land."

According to the Town, based on the setback requirements of the local ordinance, a wind turbine with an 80 meter (262 feet) tower would be required to be set back 272 feet from the property line. All setback distances noted above for the proposed wind turbine meet the local zoning code. The Town Planning Department has determined that a wind turbine is a use allowed as a matter of right in a Public Use Zoning district pursuant to Section 240–30, Permitted Community Service Uses, of the Zoning Bylaw.

Furthermore, Special Legislation (Chapter 200 of the Acts of 2007) was also passed by the General Court of Massachusetts to permit the Town of Falmouth to design and install wind energy facilities at its wastewater treatment facility at Blacksmith Shop Road, prepare and improve the site, acquire all equipment necessary for the wind energy facilities, and to make related improvements and repairs to the facilities. The Town has also secured other project approvals and permits from the Massachusetts Historical Commission, the Massachusetts Natural Heritage and Endangered Species Program, the Department of Air Force Space Command, the Massachusetts Division of Fisheries and Wildlife and the Federal Aviation Administration for the proposed project.

The Town of Falmouth, in discussions with the EPA Regional Office, has stated that it will implement a mitigation plan to minimize any potential ice throws to ensure public safety, which appears to provide an ample margin of safety even within the domestic manufacturer's internal siting considerations, where the setback distances meet Town zoning requirements, and any setback concerns appear relatively minor and appropriately mitigated. The Town of Falmouth has indicated that the foreign manufactured wind turbine that is being supplied comes equipped with vibration sensors to shut down the turbine when ice build up is detected. The control system will also be programmed to allow for manual start up as well, which will allow an operator to visually inspect the turbine to confirm that there is no ice remaining before the turbine is re-started. The Town of Falmouth will implement manual wind turbine operational control strategies during periods of ice accretion which include, but are not limited to: Curtailment of operation of the turbine, braking the blades in a "Y" to facilitate ice shedding directly underneath the wind turbine, and yawing the nacelle so that the blades are in the safest position for ice shedding. It may also post warning signs to alert personnel of the potential risk in the area. Access to the turbine area at the site is currently and will remain restricted. After hours, the only vehicular access to the treatment plant site is through a gate that is typically closed and locked. The mitigation plan will be part of the overall operational and maintenance protocol for the Town of Falmouth wastewater treatment facility.

Based on the evaluation of all of the submitted documentation by EPA's technical review team, the Town of Falmouth's statement that no U.S. manufacturer is willing to provide a 1.5 MW–2.0 MW wind turbine generator that meets project performance specifications is supported by the available evidence. In addition, the evaluation of the supporting documentation indicates that at least one foreign manufacturer will provide a wind turbine at the proposed site that can meet project design and performance specifications.

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 Town of Falmouth, to redesign or relocate a potential project. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay and potentially the cancellation of this project as sited. The delay or cancellation of 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 same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Town of Falmouth establishes a proper basis to specify the particular good required for this project, that the Town of Falmouth has agreed to implement a mitigation plan to minimize the likelihood of any potential ice throws to ensure public safety, and that this manufactured good was not available from a producer in the United States. 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 is not available from a producer in the United States, the Town of Falmouth 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 a foreign manufactured wind turbine as documented in the Town of Falmouth's follow-up submittal dated February 24, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: April 19, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–9751 Filed 4–26–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

April 21, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) 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 currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 27, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://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 list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information on the information collection, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1084.

Title: Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (CARE).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 2,242 respondents; 492,906 responses.

Estimated Time per Response: 1 minute (.017 hours) to 20 minutes (.33 hours).

Frequency of Response: Recordkeeping and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these information requirements are found in sections 1–4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 222, 258, and 303(r).

Total Annual Burden: 40,885 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is not an issue as individuals and/or households are not required to provide personally identifiable information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the 2005 Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (2005 Report and Order), CG Docket No. 02–386, FCC 05–29, which was released on February 25, 2005, the Commission adopted rules governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The Commission concluded that mandatory, minimum standards are needed in light of record evidence demonstrating that information needed by carriers to execute customer requests and properly bill customers is not being consistently provided by all LECs and IXCs. Specifically, the 2005 Report and Order requires LECs to supply customer account information to IXCs when: (1) the LEC places an end user on, or removes an end user from, an IXC's network; (2) an end user presubscribed to an IXC makes certain changes to her account information via her LEC; (3) an IXC requests billing name and address information for an end user who has usage on an IXC's network but for whom the IXC does not have an existing account; and (4) a LEC rejects an IXC–initiated PIC order. The 2005 Report and Order requires IXCs to notify LECs when an IXC customer informs an IXC directly of the customer's desire to change IXCs. In the accompanying Further Notice of Proposed Rulemaking, the Commission sought comment on whether to require the exchange of customer account information between

LECs. In December 2007, The Commission declined to adopt mandatory LEC–to–LEC data exchange requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–9632 Filed 4–26–10; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Chestnut Bancorp, Inc., Chestnut, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Chestnut, Chestnut, Illinois.

Board of Governors of the Federal Reserve System, April 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–9702 Filed 4–26–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. CrossFirst Holdings, LLC, Overland Park, Kansas; to engage *de novo* through its subsidiary, CFSA, LLC, Overland Park, Kansas, in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 22, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–9703 Filed 4–26–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0002]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Mary.Tutman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the Grants.gov Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: SF–424 Mandatory—Revision—OMB No. 4040–0002–Grants.gov.

Abstract: These 424 mandatory forms are the government-wide forms used for mandatory grant programs. The only proposed revision to the form includes making the fax number in block 17 optional. The revised form will assist agencies in collecting required data elements through the SF–424 applications. This form could be utilized by up to 26 Federal grant making agencies with mandatory grant programs. The current 4040–0002 collection expires on July 31, 2010.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
DOT	300	1	1	300
VA	363	1	1	363
Total				663

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–9655 Filed 4–26–10; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0009]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Mary.Tutman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Title: SF–424D (Assurances—Construction Programs)—Revision—OMB No. 4040–0009—Grants.gov.

Proposed Project: The SF–424D (Assurances—Construction Programs) form is an OMB currently approved collection (4040–0009). The form is being renewed without any proposed changes. This form could be utilized by up to 26 Federal grant making agencies. The SF–424D is used to provide information on required assurances when applying for construction projects under Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title and date submitted.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
VA	163	1.24	26/60	88
DOT	134	1	49/60	109
DOD	3	1	18/60	1
DHS	2,608	1	30/60	1,304
HHS	400	1.8	20/60	240
Total				1,742

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–9664 Filed 4–26–10; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0007]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Mary.Tutman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: SF–424B (Assurances—Non-Construction Programs)—Revision—OMB No. 4040–0007—Grants.gov.

Abstract: The SF–424B (Assurances—Non-Construction Programs) form is an OMB currently approved collection (4040–0007). The form is being renewed with the following proposed changes: The legal citations have been updated to reflect changes in location within the United Sates Code. The "Trafficking Victims Protection Act of 2000 (Section 106), as amended (22 U.S.C. 7104(g) has been added in Section 18. This form could be utilized by up to 26 Federal grant making agencies.

The SF–424B is used to provide information on required assurances when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title and date submitted.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
CNCS	6,450	1	30/60	3,225
DOD	107	1	9/60	16
DHS	4,308	1	1	4,308
DOL	780	1	45/60	585
VA	200	1	15/60	50
DOT	1,157	1	49/60	945
SSA	175	1	20/60	58
HHS	8,561	1.17	39/60	6,511
Total				15,698

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–9668 Filed 4–26–10; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0006]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Mary.Tutman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: SF–424A (Budget Information—Non-Construction Programs)—Revision OMB No. 4040–0006—Grants.gov.

Abstract: The SF–424A (Budget Information—Non-Construction Programs) OMB no. 4040–0006 form is a currently approved collection. The Office of Grant.gov is requesting an approval on a revision to the form; the proposed changes were made to the instructions only. In the "General Instructions" section, the following sentence is added as the last sentence: "In ALL cases total funding budgets should be reflected NOT only incremental budget request changes." Also, in the "Section B Budget Categories" section, the last sentence is revised as follows: "For each program, function or activity, fill in the total requirements for funds, Federal funding only, by object class categories." This form could be utilized by up to 26 Federal grant making agencies. The SF–424A is used to provide budget information when applying for non-construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
CNCS	6,450	1	4	25,800
DOD	108	1.6	50/60	144
DOL	2,130	1	1	2,130
VA	200	1	20/60	67
DOT	1,361	1	1.80	2,450
SSA	175	1.25	14	3,063
HHS	9,751	1.22	1.62	19,272
Total				52,926

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–9669 Filed 4–26–10; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0008]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Mary.Tutman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 60 days, and directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: SF–424C (Budget Information—Construction Programs)—Extension OMB No. 4040–0008—Grants.gov.

Abstract: The SF–424C (Budget Information—Construction Programs) form is a currently OMB approved collection (4040–0008). The form is being renewed without any proposed changes. This form could be utilized by up to 26 Federal grant making agencies. The SF–424C is used to provide budget information when applying for construction projects under Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
DOD	8	2.5	1.53	31
DOT	134	1	3	402
VA	163	1.24	38/60	128
HHS	540	1.73	2	1,868
Total				2,429

Seleda M. Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–9665 Filed 4–26–10; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0317]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance

the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: HHS–5161–1 form—Revision—OMB No. 0990–0317—The Office of the Secretary (OS).

Abstract: HHS is requesting clearance for the Checklist and Program Narrative & the Public Health System Impact Statement (PHSIS), used by several former PHS agencies within HHS; CDC 0.1113 supplemental forms used exclusively by CDC; a supplement form used exclusively by Substance Abuse Mental Health Services Administration (SAMHSA), and the Single Source Agency (SSA) notification form, as well as continued use of the project abstract form. In addition, HHS will continue to include the use of the 5161–1 form for several emergency acts and funding that were the result of the September 11th attack on the World Trade Center. Specifically, the Public Health Preparedness for Response to Bioterrorism (Emergency Supplement) (CDC), the Bioterrorism Hospital Preparedness Program cooperative agreement (HRSA), and 2 emergency response grants from (SAMHSA). The only change requested is the addition of the "Trafficking Victims Protection Act of 2000 (Section 106), as amended (22 U.S.C. 7104(g).

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Number of respondents	Response per respondents	Avg. burden per response (in hours)	Total burden (in hours)
Program Narrative, Checklist, & Project Abstract	7,338	1	4	29,373
Program Narrative, Checklist & Project Narrative (CDC)	59	6	24	8,496
Program Narrative, Checklist, & Project Narrative (HRSA)	59	1	50	2,950
CDC Form 0.1113	1,000	1	30/60	500
Public Health Impact Statement (PHSIS)	2,845	2.5	10/60	1,185
SSA (SAMHSA)	1,125	1	10/60	187
Total				42,691

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–9656 Filed 4–26–10; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10⅞%, as fixed by the Secretary of the Treasury, is certified for the quarter ended March 31, 2010. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: April 16, 2010.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2010–9719 Filed 4–26–10; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of the Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register.**

The current rate of 11¼%, as fixed by the Secretary of the Treasury, is certified for the quarter ended December 31, 2009. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: April 16, 2010.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2010–9710 Filed 4–26–10; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–10–09BS]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call Maryam I. Daneshvar, the CDC Reports Clearance Officer, at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Hemophilia and AIDS/HIV Network for the Dissemination of Information (HANDI) Evaluation Support—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Blood Disorders, located within the National Center on Birth Defects and Developmental Disabilities, implements health promotion and wellness programs designed to prevent secondary conditions in people with bleeding and clotting disorders. These programs are carried out in partnership with community-based organizations on the national and local level. The division's largest and longest standing cooperative agreement is held by the National Hemophilia Foundation (NHF). NHF, founded in 1948, has a long history of service through education, advocacy and research for people and families with hemophilia and other bleeding disorders.

The Hemophilia and AIDS/HIV Network for the Dissemination of Information (HANDI) is NHF's resource center which provides information, materials, and support to people with bleeding and clotting disorders. Over the past 17 years, HANDI's resource collection has grown to meet the changing needs of the community. HANDI processes thousands of requests for information from a wide variety of individuals and organizations including NHF chapters, medical professionals, consumers and their families, and teachers and students conducting research.

The type of information requested reflects a diversity of needs. Topics include homecare, orthopedics, physical therapy, rare factor deficiencies, psychosocial issues, blood safety, women's health, and financial and insurance reimbursement issues. HANDI's current resource library collection contains nearly 13,000 items. However, the process by which materials have been selected for development has not been informed by a systematic needs assessment or other exploratory research. Therefore, it is not known if the materials and messages that have been developed are meeting the information needs of the audiences they were intended to serve.

While there seems to be many HANDI materials available that focus on parents and family members of newly diagnosed children, considerably less attention has been given to developing materials for young children and adolescents, particularly materials that address transition issues. There are many types of transitions for the person with a bleeding disorder. These include acceptance of the bleeding disorder, self care, progressing through school, vocational/career planning, moving to an adult center, starting a family, middle age, and retirement. Transition occurs throughout life for all people, but for those with chronic illness, it takes on additional significance due to the nature of their condition.

The CDC's Division of Blood Disorders in conjunction with the National Hemophilia Foundation will conduct focus groups to gather information that will be used to design educational materials and health promotion programs for young children (aged 5–12 years) and adolescents (aged 16–19 years) that address transition issues. The groups will also be used to explore how young children and adolescents prefer to receive health messages and health information (*e.g.,* brochures, videos, podcasts, YouTube.com, etc.). These findings will inform the development of key messages tailored to the target audiences.

The contractor selected will work with CDC and NHF, through its chapter network, to identify and recruit focus group participants. Formative research participants will include (1) parents of young children (aged 5–12 years) or young adults who can reflect back upon their experience and share what information, resources, and support they wished had been available when their child was young, and (2)adolescents (aged 16–19 years). Participants will include (1) parents of young children (aged 5–12 years) and (2) adolescents (aged 16–19 years). Participants will be recruited to participate in one of twelve in-person focus groups that will be conducted in the following cities: Detroit, Atlanta, Philadelphia, and Denver. There are no costs to the respondents other than time. The Total Estimated Annualized Burden is 197 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Responses per respondent	Avg. burden per response (in hours)
Parents of adolescents (aged 5–12) and parents of teens/young adults (aged 16–19) living with hemophilia. Young adults aged 16–19 living with hemophilia.	Participant Screener and Recruitment Script.	120	1	12/60
Parents of adolescents (aged 5–12) and parents of teens/young adults (aged 16–19) living with hemophilia. Young adults aged 16–19 living with hemophilia.	Moderator's Guide	108 (12 groups × 9 participants per group).	1	1.5
Parents of adolescents (aged 5–12) and parents of teens/young adults (aged 16–19) living with hemophilia.	Informed Consent	108 (12 groups × 9 participants per group).	1	6/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Responses per respondent	Avg. burden per response (in hours)
Young adults aged 16–19 living with hemophilia.				

Dated: April 21, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–9690 Filed 4–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–10–09AX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Survey of U.S. Long-Haul Truck Driver Injury and Health—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Occupational Safety and Health Act of 1970, Public Law 91–596 (Section 20[a][1]) authorizes NIOSH to conduct research to advance the health and safety of workers. In this capacity, NIOSH will conduct a national survey of long-haul truck drivers.

Truck drivers are at increased risk for numerous preventable diseases and health conditions; previous research suggests that truck drivers are at increased risk for lower back pain, heart disease, hypertension, stomach ulcers, and cancers of the bladder, lung, prostate, and stomach. Truck drivers also face extraordinary risk of on-the-job mortality. In 2007, the fatality rate for "driver/sales workers and truck drivers" was 28.2 per 100,000 workers, compared with a rate of 3.8 per 100,000 for all workers. Drivers of heavy and tractor-trailer trucks had more fatal work injuries than any other single occupation (822 deaths in 2007).

Truck drivers experience high rates of occupational injury and illness, but little is known about the prevalence of factors suspected to place them at increased risk. Information is needed on the role of occupation in driver health and on mechanisms of driver injuries. In evaluating the potential health effects of the 2005 hours-of-service ruling, the Federal Motor Carrier Safety Administration stated that due to a lack of evidence specific to trucking operations, information from different fields had to be adapted to a trucking environment. Research needs cited by stakeholders include detailed data on the prevalence of selected health conditions and risk factors among truck drivers, and data on working conditions, injury causes and outcomes, and health behaviors.

NIOSH has obtained input on plans for this survey through stakeholder meetings, a webinar, an Internet blog, and from comments received through NIOSH Docket 110 and during a focus group discussion with 7 truck drivers. The survey instrument has been reviewed by 6 subject matter experts and 9 cognitive interviews have been conducted using the survey instrument. Input received was used to guide development of the survey instrument and plans for survey implementation. Subjective data on understanding and phrasing of questions were collected during the focus group discussion and cognitive interviews.

The proposed national survey will be based upon a probability sample of truck stops. The survey will be conducted at locations along freight corridors in 5 geographic regions (Northeast, South, Great Lakes, Central, and West). The number of locations to be visited within each region will be related to the traffic load in that region. Eligible truck drivers stopping at selected truck stops will provide all survey data. The major objectives of the survey will be to: (1) Determine the prevalence of selected health conditions and risk factors; (2) characterize drivers' working conditions, occupational injuries, and health behaviors; (3) explore the associations among health status, individual risk factors, occupational injuries and occupational exposures related to work organization. The survey will eliminate significant gaps in occupational safety and health data for long-haul truck drivers. The results will assist regulatory agencies in focusing rulemaking, furnish industry and labor with safety and health information needed by their constituents, and stimulate future research and advocacy to benefit truck drivers.

The target population of drivers for this survey will be limited to drivers who: Have truck driving as their main job; drive a truck with 3 or more axles (requiring the driver to have a commercial driver's license); have been a heavy truck driver 12 months or longer; and who usually take at least one mandatory 10-hour rest period away from home during each delivery run.

The study instrument will be interviewer-administered to 2,457 eligible truck drivers at 50 truck stops. Individuals will first be asked a series of questions to determine if they are eligible to participate in the survey, followed by administration of the main interview. Individuals who do not wish to participate in the main interview will be given a short non-respondent interview. Respondents will not be asked to report names or any other identifying information.

The project supports the NIOSH surveillance function to advance the usefulness of surveillance information for the prevention of occupational injuries, illnesses, and hazards, and actively promote the dissemination and use of NIOSH surveillance data and information. This survey will allow NIOSH to explore the inter-relationships among dimensions of health status, individual risk factors, occupational injuries, sleep disorders, and occupational exposures. It will also provide detailed demographic data on long-haul truck drivers, which have not

been available previously, and could provide baseline data to inform future cohort and prospective studies.

NIOSH will use the information to calculate prevalence and customize safety and health interventions for long-haul truck drivers. Once the study is completed, results will be made available via various means. There is no cost to respondents other than their time.

The total estimated annualized burden to respondents is 2,028 hours.

ANNUALIZED ESTIMATED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Truck Drivers	Screening Interview	2,457	1	1/60
	Non-respondent Interview	615	1	2/60
	Main Interview	2,457	1	48/60

Dated: April 21, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–9691 Filed 4–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000 L14200000.BJ0000]

Notice of Correction for Notice of Filing of Plat of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, on January 15, 2004. The BLM published a Notice of Filing of Plat of Survey in the **Federal Register** on April 8, 2010 [75 FR 17952] which contained errors in the description format.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by e-mail *Marcella_Montoya@nm.blm.gov,* for assistance.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM):

The plat representing the dependent resurvey and survey in Townships 20 North, Ranges 7 and 8 East, of the New Mexico Principal Meridian, accepted January 8, 2004, for Group 1018 NM. This survey is based on Public Law 108–66, 117 Stat. 876, enacted on July 30, 2003, by which Congress directed that certain lands under the management of the BLM be transferred to be held in trust for the Pueblos of San Ildefonso and Santa Clara. A boundary line, established by the two Pueblos, was identified by this survey to separate two tracts located within Township 20 North, Ranges 7 and 8 East, New Mexico Principal Meridian, New Mexico, more particularly described as follows:

Land Description for Santa Clara Land Tract

Beginning at Angle Point #1 on the line between Secs. 21 and 22, T. 20 N., R. 7 E., thence along the N. bdy. of San Ildefonso lands and S. bdy. of Santa Clara Lands;
S 45°26′ E 22.79 chs. to Angle Point #2,
S 85°47′ E 12.37 chs. to Angle Point #3,
S 25°24′ E 13.23 chs. to Angle Point #4,
S 83°54′ E 29.72 chs. to Angle Point #5,
S 76°18′ E 35.23 chs. to Angle Point #6,
S 66°42′ E 21.30 chs. to Angle Point #7,
S 60°13′ E 16.50 chs. to Angle Point #8,
S 7°32′ E 13.98 chs. to Angle Point #9,
S 24°51′ E 23.41 chs. to Angle Point #10,
S 58°57′ E 13.25 chs. to Angle Point #11 on the N. bdy. of the San Ildefonso Pueblo Grant, thence along the N. bdy. of the San Ildefonso Pueblo Grant;
S 89°58′ E 5.49 chs. to the line between Secs. 25 and 26 to the north,
S 89°58′ E 66.04 chs. to Milepost 4
N 89°53′ E 4.375 chs. to Angle Point #4 of Tract A
N 43°24′ W 12.12 chs. to Angle Point #3 of Tract A
N 89°48′ E 5.66 chs. to Angle Point #2 of Tract A
S 43°21′ E 12.115 chs. to Angle Point #1 of Tract A
N 89°47′ E 4.04 chs. to the intersection with the line between T. 20 N., R. 7 E. and T. 20 N., R. 8 E.,
thence through Section 30, T. 20 N., R. 8 E.,
N 89°47′ E 26.95 chs. to the SE corner of the Santa Clara Lands Tract, identical with the SW corner of the Santa Clara Pueblo Grant,
thence along the W. bdy. of the Santa Clara Pueblo Grant;
N 0°02′ E 15.33 chs. to Milepost 5,
N 0°03′ E 40.31 chs. to Milepost 4½,
N 0°01′ E 15.90 chs. to the closing corner between Sections 19 and 30,
N 0°01′ E 24.06 chs. to Milepost 4,
North 16.10 chs. to the E–W center line of Section 19,
S 89°58′ W 27.08 chs. along the E–W center line of Section 19 to the closing corner with T. 20 N., R. 7 E.,
thence along the line between T. 20 N., R. 7 E. and T. 20 N., R. 8 E.;
N 0°45′ W 2.96 chs. to the ¼ section corner of Section 24, T. 20 N., R. 7 E.,
thence along the E–W center line of Section 24 and the S. bdy. of the Santa Clara Indian Reservation;
S 88°18′ W 39.79 chs. to a point on the E–W center line of Section 24,
S 88°24′ W 39.80 chs. to the ¼ section corner of Sections 23 and 24,
thence along the E–W center line of Section 23, and the S. bdy. of the Santa Clara Indian Reservation;
S 89°32′ W 39.98 chs. to a point on the E–W center line of Section 23,
S 89°30′ W 39.98 chs. to the ¼ section corner of Section 23 only,
thence between Sections 22 and 23;
N 0°06′ W 4.29 chs. to the ¼ section corner of Section 22 only,
N 0°06′ W 35.94 chs. to the corner of Sections 14, 15, 22 and 23,
thence between sections 15 and 22, and along the S. bdy. of the Santa Clara Indian Reservation;
N 89°03′ W 38.635 chs. to the ¼ section corner of Section 15 only,
N 89°02′ W 2.16 chs. to the ¼ section corner of Section 22 only,
N 89°02′ W 36.44 chs. to the corner of Sections 15 and 16 only,
S 85°19′ W 3.53 chs. to the closing corner of Sections 21 and 22,
thence along the line between Sections 21 and 22;
South 36.93 chs. to the ¼ section corner of Sections 21 and 22,
South 17.16 chs. to Angle Point #1 and point of beginning, containing 2422.99 acres, more or less.

Land Description for San Ildefonso Land Tract

Beginning at AP1 on the line between Secs. 21 and 22, T. 20 N., R. 7 E., thence along the south boundary of Santa Clara lands and the north boundary of San Ildefonso lands;
S 45°26′ E 22.79 chs. to AP2,
S 85°47′ E 12.37 chs. to AP3,
S 25°24′ E 13.23 chs. to AP4,
S 83°54′ E 29.72 chs. to AP5,
S 76°18′ E 35.23 chs. to AP6,
S 66°42′ E 21.30 chs. to AP7,
S 60°13′ E 16.50 chs. to AP8,
S 7°32′ E 13.98 chs. to AP9,
S 24°51′ E 23.41 chs. to AP10,

S 58°57′ E 13.25 chs. to AP11,
thence along the north boundary of the San Ildefonso Pueblo Grant;
N 89°58′ W 1.74 chs. to CC of Secs. 25 and 26 to the south,
N 89°58′ W 7.28 chs. to Milepost 5,
West, 18.12 chs. to NW Cor. San Ildefonso Pueblo Grant,
thence along the west boundary of the San Ildefonso Pueblo Grant;
S 0°03′ E 7.52 chs. to CC of Secs. 26 and 35 to the west,
S 0°03′ E 0.88 chs. to CC of Secs. 26 and 35 to the east,
S 0°03′ E 36.00 chs. to Milepost 2,
S 0°02′ E 39.45 chs. to the intersection with the S. boundary of T. 20 N., R. 7 E.,
thence along the south boundary of Sec. 35;
S 89°17′ W 7.40 chs. to the ¼ section cor. of Sec. 35,
West 7.02 chs. to the ¼ section cor. of sec. 2,
West 33.43 chs. to the corner of Secs. 34 and 35,
thence along the south boundary of Sec. 34;
S 89°56′ W 6.65 chs. to the corner of Secs. 2 and 3,
S 89°56′ W 33.33 chs. to the ¼ section cor. of Sec. 34,
N 89°53′ W 6.78 chs. to the ¼ section cor. of sec. 3,
N 89°53′ W 33.20 chs. to the corner of Secs. 33 and 34,
thence along the line between Secs. 33 and 34;
N 0°02′ W 40.02 chs. to the ¼ section cor. of Secs. 33 and 34,
N 0°03′ W 40.01 chs. to the corner of Secs. 27, 28, 33 and 34,
thence along the line between Secs. 27 and 28;
N 0°02′ W 39.97 chs. to the ¼ section cor. of Secs. 27 and 28,
North 39.93 chs. to the corner of Secs. 21, 22, 27 and 28,
thence along the line between Secs. 21 and 22;
North 22.90 chs. to AP1 and point of beginning, containing 1982.17 acres, more or less.

Stephen W. Beyerlein,

Acting Chief, Branch of Cadastral, Survey/GeoSciences.

[FR Doc. 2010–9695 Filed 4–26–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services; Division of Oral Health; Dental Preventive and Clinical Support Centers Program

Announcement Type: New and Continuing Competitive.

Funding Announcement Number: HHS–2010–IHS–TDCP–0001.

Catalog of Federal Domestic Assistance Number: 93.933

Key Dates

Application Deadline Date: June 2, 2010.

Review Date: June 9, 2010.

Earliest Anticipated Start Date: August 31, 2010.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive applications for the Dental Preventive and Clinical Support Centers (DPCSC) Program. This program is authorized under the Snyder Act, 25 U.S.C. 13, and the Public Health Service Act Section 301(a), as amended. The DPCSC Program supports the dental health objectives as outlined in 25 U.S.C. 1602(b)(20–26). This program is described in the Catalog of Federal Domestic Assistance (CDFA) under 93.933.

Background

The primary customers of a Support Center are our dental programs and personnel throughout an IHS Area or broad geographic region. The primary customers are not dental patients or Tribes. The primary function of a Support Center is not the direct provision of clinical care. Well-designed Support Centers will indirectly impact upon patients' oral health by directly addressing the perceived needs of dental personnel and Area or regional dental programs.

Purpose

Support Centers will combine existing resources and infrastructure with IHS Headquarters (HQ) and IHS Area resources in order to address the broad challenges and opportunities associated with IHS preventive and clinical dental programs. Support Centers will restore lost administrative and support infrastructure, and meet the perceived needs of dental programs on a regional or IHS Area basis. In short, Support Centers empower the dental programs they serve.

Proposed local programs focused on clinical or preventive care alone, with no concomitant focus on a regional or Area support-oriented component for the dental program, while well-intentioned and of potential value, are not responsive to this announcement or to the Support Center project.

- Centers *will* assess the needs of the dental programs served. In order to be responsive to the perceived needs of the dental personnel throughout an Area or region, perceived needs *must* be systematically assessed. Initial and periodic recurring structured needs assessments or other appraisals of perceived needs of the programs and personnel to be served are essential. Successful proposals will either document the perceived needs of Area programs and personnel, or outline how Area needs will be assessed.
- Centers *will* provide technical assistance and resources for local and Area clinic-based and community-based oral health promotion/disease prevention (HP/DP) initiatives.
- Centers *will* send an appropriate representative or representatives to national Support Centers project meetings convened by IHS HQ DOH. Such meetings will be convened annually, as deemed necessary by HQ DOH. All centers are expected to reserve sufficient funds to send a representative or representatives to these meetings.
- Centers *will* promote the coordination of research, demonstration projects, and studies relating to the causes, diagnosis, treatment, control, and prevention of oral disease. This will be addressed through the collection, analysis, and dissemination of data or other methodology deemed appropriate by the IHS DOH.
- Each center *will* collaborate with IHS HQ DOH on one ongoing national initiative. Those centers wishing to identify or discuss appropriate collaborative national efforts are encouraged to contact the designated Program Official for this Support Centers project.
- Centers are strongly encouraged to provide technical assistance and resources for local and Area clinical programs.
- Centers are strongly encouraged to provide technical assistance and resources for continuing education opportunities for Area dental personnel.
- Centers are strongly encouraged to address Early Childhood Caries (ECC). Interventions must include an evaluation process assessing outcomes in addition to process (that is, an assessment of actual prevalence of disease over the course of the intervention, in addition to counts or assessments of activities or services and products provided to clientele).
- Centers are strongly encouraged to monitor the prevalence and severity of ECC.

II. Award Information

Type of Awards: Grant

Estimated Funds Available: The total amount of funding identified for the current fiscal year FY 2010 is approximately $996,000. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no

obligation to make awards funded under this announcement.

Anticipated Number of Awards: Approximately four awards will be issued under this program announcement.

Project Period: Five years. Funding beyond the initial year is subject to availability of funds.

Award Amount: $249,000 annual, per Center.

III. Eligibility Information

I. Eligibility

The eligible applicants include:

- Urban Indian Organizations, Title V Urban Health organizations, 25 U.S.C. 1603(h).
- Tribal organizations, 25 U.S.C. 1603(e).

Definitions

"Tribal organization" means the elected governing body of any Indian Tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. 1603(e).

"Urban Indian organization" means a non-profit corporate body situated in an urban center governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities. 25 U.S.C. 1603(h).

2. Cost Sharing or Matching

The DPCSC Program encourages, but does not require, matching funds or cost sharing.

3. Other Requirements

If the application budget exceeds the stated dollar amount that is outlined within this announcement it will not be considered for funding.

Nonprofit urban (IHS) organizations must submit a copy of the 501(c)(3) Certificate as proof of non-profit status. This is not a requirement for Tribal organizations.

All individual programs to be served must be listed in the proposal. There is no requirement that a Center serve a minimum number of field programs. However, applicants proposing services to an entire Area or region will enjoy a significant competitive advantage during the review and scoring of applications over those proposing services to a relatively small number of dental programs.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and instructions may be located at *www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.*

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package.

Mandatory documents for all applicants include:

- Application forms:
  - SF–424.
  - SF–424A.
  - SF–424B.
- Budget Narrative (must be single spaced).
- Project Narrative (must not exceed 25 pages).
- Assurances and Certifications
- 501(c)(3) Certificate (Title V Urban Indian Health Programs only).
- Biographical sketches for all Key Personnel.
- A cover page.
- Project Abstract (not to exceed one page).
- Table of Contents.
- Categorical Budget Narrative and Budget Justification.
- Appended Items.
- Disclosure of Lobbying Activities (SF–LLL) (if applicable).
- Electronic files illustrating a limited selection of work products such as pamphlets or handouts produced at existing Support Centers or through similar initiatives can be appended. Appended letters of reference or support are not requested, nor required. Regardless of submission format (electronic or paper), appended documents do not count toward the 25 page limit.
- Documentation of current OMB A–133 required Financial Audit, if applicable. Acceptable forms of documentation include:
  - Face sheets (only) from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records.*
  - Proof of fiscal audit does not include a full copy of the audit report. Please submit the face page, as proof.

Applicants submitting paper proposals (for proposal format, *see* section IV–3) will adhere to the following requirements:

- Single spaced.
- Typewritten.
- Consecutively numbered pages.
- Black type not smaller than 12 characters per one inch.
- Submit on one side only of standard 8½ × 11 inch paper.
- Do not tab, glue, or place in a plastic holder.
- Narrative not to exceed 25 typed pages. The 25 page narrative does not include any standard forms, table of contents, budget, budget justifications, and/or other appended items. Please note that an outstanding proposal that is highly competitive can be outlined in significantly less than 25 pages. Use the pages as needed, but focus on a quality submission rather than the quantity of the submission.
- Submit one original and two copies of the proposal

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 25 pages (see page limitations for each Part noted below).

Detailed content of application submission follows.

- A cover page labels the submission as a "Proposed Dental Preventive and Clinical Support Center" for one or more identified IHS Areas or a defined geographic region. It includes contact information for one primary author or contact, and for one alternate contact.
- Project Abstract (not to exceed one page), providing the synopsis of "who, what, when, where, why, and associated costs."
- Table of contents to correspond with numbered pages of the narrative and attachments. Format outlined in the table of contents and used for the proposal is discretionary. However, a format utilizing labels or "signposts" that enables reviewers to easily locate the sections of the proposal being evaluated and scored (that is, perceived challenges/assessment of program needs/targeted recipients, goals and objectives, methodology/activities, proposed budget, results/deliverables, evaluation, and organizational capabilities) is suggested.
- Content of the application should relate directly to the overarching

emphasis of the support center project, to provide support and technical assistance to Area and field programs for:
  - clinical dental programs
  - community-based preventive initiatives
  - clinic-based preventive programs
  - regional and national initiatives
- Applications proposing services to proportionately greater numbers of dental programs within an Area or region will gain a competitive advantage over proposals outlining services to relatively few dental programs per Area or region.
- The project narrative should address the proposed Support Center's commitment to:
  - Sound program planning and evaluation principles, outlining goals and anticipated results linked to outcome objectives, process objectives, milestones or annual objectives, proposed activities, and an evaluation process.
  - Sound initial and on-going assessments of perceived needs.
  - Provide assistance and support to local, regional, and national initiatives in collaboration with the IHS HQ DOH.
  - Collaborate with other Support Centers through regional and national cooperative ventures.
  - Proactively share work products and lessons learned throughout the IHS dental program.
  - Reserve sufficient funding in each annual budget for at least one Support Center representative to attend an annual national meeting, if deemed necessary by the Project Officer.
  - Program accountability grounded in objectively assessed and documented progress toward stated program goals and objectives.
  - Evaluate protocol that directly addresses on an annual basis all outcome and process objectives.

Technical information regarding the Support Centers project, including examples of appropriate support and assistance, may be obtained from the Project Official:

Dr. Patrick Blahut, Division of Oral Health, IHS, 801 Thompson Ave., Suite 300, Rockville, MD 20852, (301) 443–4323, *E-mail: patrick.blahut@ihs.gov.*

While clarification of questions and discussion of examples of appropriate support and work products are encouraged, each applicant is reminded to focus on the specific needs of the programs they propose to serve.

The DOH through its Program Official will, upon request, provide technical assistance. Such assistance will be provided objectively and consistently in response to any and all inquiries.

- Provide information pertinent to program planning, program evaluation, and the evolving needs of the IHS DOH upon request.
- Provide information, feedback, and guidance on appropriate Support Center/IHS HQ national collaborative projects.
- Provide feedback concerning reports, progress toward goals and objectives, and overall performance.
- Provide templates or suggested content for reports.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by June 2, 2010 at 12 midnight Eastern Standard Time (EST). Any application received after the application deadline may not be accepted for processing, and may be returned to the applicant(s) without further consideration for funding.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Division of Grants Policy (DGP) (*tammy.bagley@ihs.gov*) at (301) 443–5204. Please be sure to contact Ms. Bagley at least ten days prior to the application deadline. Please do not contact the DGP until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained. The waiver must be documented in writing (e-mails are acceptable), *before* submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGO, 12300 Twinbrook, Suite 360, Rockville MD 20852. Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. Late applications may not be accepted for processing, may be returned to the applicant, and may not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are/are not allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74 and 92, pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one award will be made to provide services to any individual Area or region.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

Use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Apply for Grants" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in Grants.gov by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- Paper applications are not the preferred method for submitting applications. However, if you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *www.Grants.gov/CustomerSupport* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.

• If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGO by the deadline date of June 2, 2010.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGO.

• All applicants must comply with any page limitation requirements described in this Funding Announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGO nor the IHS DOH will notify applicants that the application has been received.

E-mail applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a unique nine-digit identification number provided by D&B, which uniquely identifies your entity. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following Web site *http://fedgov.dnb.com/webform* or to expedite the process call (866) 705–5711.

Applicants must also be registered with the CCR and a DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *www.ccr.gov.* Additional information regarding the DUNS, CCR, and Grants.gov processes can be found at: *www.Grants.gov.*

Applicants may register by calling 1(866) 606–8220. Please review and complete the CCR Registration worksheet located at *www.ccr.gov.*

V. Application Review Information

Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for consideration for funding. Scores above 65 do not guarantee funding. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and statement of perceived problems. Assessment of perceived initial and evolving local program needs. Targeted recipients of services. (14 points)

(1) An assessment of initial dental program needs, or a detailed plan for such assessment, is required for funding. Complete lack of a documented needs assessment or a detailed plan for such assessment will result in rejection of the proposal.

(2) Outline a plan to assess evolving dental program needs over time, including identification of steering committee members or a plan for structured, periodic feedback from customers, a tentative schedule of steering committee meetings or conference calls, and how an ongoing assessment will be used to produce an evolving program geared to changing needs.

(3) Describe existing Area or regional problems, challenges, or perceived need for the support center.

(4) Describe the perceived needs of programs to be served. State how these needs are known to you (through a systematic needs assessment, or through an informal appraisal to be augmented with a more systematic assessment in the near future, or through other described channels).

(5) Discuss the proposed coverage or recipients of services in your region or Area. List by name the individual programs or Service Units to be served. If some facilities in the region or Area will not be served, identify them and provide the criteria or reason for exclusion (there is no requirement that all dental programs will be served). It is assumed, unless stated otherwise, that facilities to be served will each be offered equivalent services, and receive differing services based solely on need.

B. Program goals and objectives. (15 points)

(1) Describe briefly, in plain English rather than measurable objectives, what the project intends to accomplish.

(2) State long term goals or outcome objectives, and the annual process objectives or milestones of the project. Describe how these objectives will address the clinical and preventive needs of dental programs in the Area or region. Objectives should be specific, measurable, potentially attainable or realistic, relevant to perceived needs, and time-bound or with clearly specified deadlines.

(3) Describe the rationale for choosing your program goals over other possible proposed outcomes. Why are your specific goals considered especially important?

C. Methodology, activities, work plan. (14 points)

(1) Describe the specific activities that will lead to attainment of each objective. If the connections between long-term goals, annual objectives or milestones, and activities are not obvious, outline or explain them. That is, describe how your planned activities will lead to attaining annual goals, and how these annual accomplishments will lead to attaining long-term goals.

(2) Describe how support center activities will complement existing initiatives, infrastructure, and support systems (if any).

(3) Describe the specific community-based and clinic-based preventive initiatives and activities you will stress. Approaches may be innovative, but must also be scientifically sound and evidence-based.

(4) What data will be obtained, analyzed, and maintained? While collecting data describing activities is appropriate, achieving both annual and long-term outcomes with the data to document attainment is essential.

(5) Provide a work plan tied closely to goals and objectives that is project specific, sound, effective and realistic.

D. Proposed budget. (14 points)

(1) Provide a detailed categorical budget for the initial year of the project.

(2) Justify the proposed budget: for any line item not obviously linked to your work plan, explain why the line item is necessary and relevant to attaining goals and objectives of the project.

(3) If indirect costs are claimed, either: (1) state the negotiated rate and include a copy of the current rate agreement, or (2) explain how the amount requested was calculated.

(4) Provide, in summary form, proposed budgets for years two through five. Detail required in the budget for the initial year is not necessary for subsequent years.

E. Anticipated results, deliverables. (15 points)

(1) Describe anticipated annual outcomes for initial and subsequent years.

(2) Describe overall anticipated five-year outcomes.

(3) Describe how the annual results relate to improved oral health and progress toward overall project goals and objectives.

(4) Describe in detail anticipated work products or deliverables. Include estimated deadlines for all products or deliverables. It is recognized that evolving needs may result in revised deliverables.

(5) Proactive dissemination of information and deliverables is considered an integral, collaborative function of all support centers. Describe plans or mechanisms to proactively share deliverables, work products, results, and "lessons learned" with other support centers, IHS Areas, and other appropriate groups.

F. Evaluation. (14 points)

(1) Describe how the project will be evaluated. Describe how you will determine if the project is meeting identified needs and achieving stated objectives.

(2) Specify what will be measured, when the assessments will take place, and how the collected data will be analyzed and reported.

(3) Include a brief evaluation protocol for every program goal and annual objective that enables the reader to understand how progress will be assessed.

(4) Identify who will conduct the various assessments and overall evaluation.

(5) What will be done with evaluation results? With whom will the results be shared? How will evaluative data be utilized to result in a more effective program?

(6) Describe plans, if any, for periodic "outside" or objective program reviews.

G. Organization capabilities, personnel qualifications, resources. (14 points)

(1) Describe where the project will be housed. Describe available resources such as office furnishings, computers, and equipment.

(2) State the total annual overhead, administrative and indirect costs. Describe the services and resources these payments will provide. An ideal center leverages existing infrastructure to maximize resources available for direct program support.

(3) Describe any plans for sustainability, leveraging of resources, and collaborative efforts.

(4) List any additional resources available to the proposed center, such as matching funds, or collaborative agreements. Matching funds and collaborative agreements are not required.

(5) Describe in detail any cost sharing or "in kind contributions." Cost sharing or "in kind contributions" are not required.

(6) If personnel have been identified and are committed to the initiative, describe the qualifications and relevant experience of key personnel.

(7) Demonstrate the organization has systems and expertise to manage Federal funds. How will the project operate both financially and administratively?

(8) List the qualifications and experience of any consultants or contractors.

(9) Append a scope of work or job description for key center positions. Descriptions will list duties and include desired qualifications and experience.

(10) Append resumes of key personnel, including consultants or contractors. Position descriptions with detailed qualifications of those to be recruited will suffice if personnel have not yet been identified.

(11) Describe the experience of your program or personnel in providing similar services in the past. No *de facto* preference will be given to existing support centers. New applicants are evaluated on a "level playing field" with existing support centers applying for a new cycle of competitive funding. Achievements of current support centers are not a substitute for a well-formulated plan, but are considered evidence of past performance as predictive of potential future performance.

2. Review and Selection

Each application will be prescreened by the DGO staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee. Applicants will be notified by the DGO, via letter, of the missing components of the application.

To obtain a minimum score for funding, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be informed via e-mail of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to the applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page of the application.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer; this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded for the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document and is signed by an authorized grants official within the Indian Health Service.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR, Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.
- 45 CFR, Part 74, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB A–87).
- Title 2: Grant and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application.

In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/indirect/indirect.asp.* If your organization has questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

4. Reporting Requirements

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report of progress toward objectives must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Annual Financial Status Reports (FSR) reports must be submitted within 30 days after the budget period ends. Final FSRs are due within 90 days of expiration of the project period. Standard Form 269 (long form for those reporting on program income; short form for all others) will be used for financial reporting.

Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due annually (although specific to this announcement, Progress Reports are due semi-annually). Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

Grants (Business), John Hoffman, Grants Management Officer, 801 Thompson, TMP, Suite 360, Rockville, MD 20852, (301) 443–2116 or *john.hoffman@ihs.gov.*

Program (Programmatic/Technical), Patrick Blahut, D.D.S., M.P.H., Deputy Director, Division of Oral Health, 801 Thompson Ave. Suite 332, Rockville, MD 20852, (301) 443–4323, *patrick.bluhut@ihs.gov.*

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: April 19, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–9701 Filed 4–26–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Health Resources and Services Administration (HRSA); CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment (CHACHSPT)

In accordance with section l0(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and HRSA announce the following meeting of the aforementioned committee:

Times and Dates:
8 a.m.–5:30 p.m., May 11, 2010.
8 a.m.–3 p.m., May 12, 2010.

Place: JW Marriott Buckhead, 3300 Lenox Road, Atlanta, Georgia 30326, Telephone: (404) 262–3344.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC, and the Administrator, HRSA, regarding activities related to the prevention and control of HIV/AIDS and other STDs, the support of healthcare services to persons living with HIV/AIDS, and the education of health professionals and the public about HIV/AIDS and other STDs.

Matters To Be Discussed: Agenda items include issues pertaining to: (1) The impact of the economic recession on State and local prevention, care, and treatment programs; (2) recent developments and new opportunities regarding enhancing viral hepatitis prevention in the United States; (3) a discussion of the successes and remaining challenges in expedited partner therapy implementation; (4) an update from the CHACHSPT Workgroup on HIV Care, Treatment, and Prevention in the New Millennia; and (5) the establishment of a Scientific Program Review Workgroup that will focus on the strategic realignment of funding to support priorities in sexual health and STD disparities among racial and ethnic minorities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, CDC, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop 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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 21, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2010–9694 Filed 4–26–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Advisory Committee for Reproductive Health Drugs; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Reproductive Health Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 17, 2010, from 8 a.m. to 4:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kalyani.Bhatt@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in Washington, DC area), code 3014512537. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hotline/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 17, 2010, the committee will discuss new drug application (NDA) 22–474, ulipristal acetate tablets, 30 milligrams (mg), by Laboratoire HRA Pharma. Ulipristal is an emergency contraceptive for the proposed indication of the prevention of pregnancy following unprotected intercourse or a known or suspected contraceptive failure.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 2, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 24, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 25, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–9660 Filed 4–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Advisory Committee for Reproductive Health Drugs; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Reproductive Health Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 18, 2010, from 8 a.m. to 4:30 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel telephone number is 301–977–8900.

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kalyani.Bhatt@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in Washington, DC area), code 3014512537). Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hotline/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 18, 2010, the committee will discuss new drug application (NDA) 22–526, flibanserin

100 milligram (mg) tablets, by Boehringer Ingelheim Pharmaceuticals, Inc., for the proposed indication of the treatment of hypoactive sexual desire disorder in premenopausal women.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 3, 2010. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 25, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 26, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 12, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–9661 Filed 4–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council will meet on May 11–12 at SAMHSA, Rockville, Maryland. The meeting is open to the public.

The SAMHSA National Advisory Council was established to advise the Secretary, Department of Health and Human Services (HHS), and the Administrator, SAMHSA, to reduce the impact of substance abuse and mental illnesses in American communities. The Agenda will include a report from the new SAMHSA Administrator and presentations and discussions related to SAMHSA's 10 strategic initiatives that will focus the Agency's work on improving lives and capitalizing on emerging opportunities that advance and protect the Nation's health.

Attendance by the public will be limited to space available. Public comments are welcome. The meeting can also be accessed via webstream. To obtain the call-in numbers and access codes, to submit written or brief oral comments, or to request special accommodations for persons with disabilities, please register on-line at *https://nac.samhsa.gov/Registration/meetingsRegistration.aspx.* You may also communicate with the SAMHSA National Advisory Council Designated Federal Officer, Ms. Toian Vaughn (*see* contact information below).

Substantive program information and a roster of Council members may be obtained either by accessing the SAMHSA Committee Web site, *https://nac.samhsa.gov/NACcouncil/index.aspx* or by contacting Ms. Vaughn. The transcript for the meeting will be available on the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: SAMHSA National Advisory Council.

Date/Time/Type: Tuesday, May 11, 2010, from 9 a.m. to 6 p.m.: OPEN. Wednesday, May 12, 2010, from 9 a.m. to 3 p.m.: OPEN.

Place: Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Rd., Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Toian Vaughn, M.S.W., Designated Federal Official, SAMHSA National Advisory Council and SAMHSA Committee Management Officer, 1 Choke Cherry Road, Room 8–1089, Rockville, Maryland 20857, Telephone: (240) 276–2307; FAX: (240) 276–2220 and E-mail: *toian.vaughn@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2010–9715 Filed 4–26–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Tobacco Product Constituents Subcommittee of the Tobacco Products Scientific Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Tobacco Product Constituents Subcommittee of the Tobacco Products Scientific Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 8, 2010, from 8:30 a.m. to 5 p.m. and on June 9, 2010, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, 2 Montgomery Village Ave., Gaithersburg, MD 20879. The hotel phone number is 301–948–8900.

Contact Person: Karen Templeton-Somers, Office of Science, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose Option 4), e-mail: *TPSAC@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732110002. Please call the Information

Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 8 and 9, 2010, the subcommittee will receive presentations and discuss the development of a list of harmful or potentially harmful constituents, including smoke constituents, in tobacco products. Topics for discussion will include the criteria for selection of the constituents, developing a proposed list of harmful or potentially harmful constituents, the rationale for including each constituent, and the acceptable analytical methods for assessing the quantity of each constituent. A second meeting of this subcommittee, to continue these discussions as necessary and to include ancillary and normalization standards for the constituents, will be scheduled for the summer of 2010.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 28, 2010. Oral presentations from the public will be scheduled between approximately 2:45 p.m. and 3:45 p.m. on June 8, 2010. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 20, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 21, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 21, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–9662 Filed 4–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–153–A]

Request for the Technical Review of 22 Draft Skin Notation Assignments and Skin Notation Profiles

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public comment period.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is conducting a public review of the draft skin notations and support technical documents entitled "Skin Notations Profiles, for 22 chemicals." NIOSH is requesting technical reviews of the draft Skin Notation Profiles. To facilitate the review of these documents, NIOSH requests that the following questions be taken into consideration:

1. Does this document clearly outline the systemic health hazards associated with exposures of the skin to the chemical? If not, what specific information is missing from the document?

2. If the SYS or SYS (FATAL) notations are assigned, is the rationale and logic behind the assignment clear? If not assigned, is the logic clear why it was not (e.g., insufficient data, no identified health hazard)?

3. Does this document clearly outline the direct (localized) health hazards associated with exposures of the skin to the chemical? If not, what specific information is missing from the document?

4. If the DIR, DIR (IRR), or DIR (COR) notations are assigned, is the rationale and logic behind the assignment clear? If not assigned, is the logic clear why it was not (e.g., insufficient data, no identified health hazard)?

5. Does this document clearly outline the immune-mediated responses (allergic response) health hazards associated with exposures of the skin to the chemical? If not, what specific information is missing from the document?

6. If the SEN notation is assigned, is the rationale and logic behind the assignment clear? If not assigned, is the logic clear why it was not (e.g., insufficient data, no identified health hazard)?

7. If the ID$^{(SK)}$ or ~~SK~~ were assigned, is the rationale and logic outlined within the document?

8. Are the conclusions supported by the data?

9. Are the tables clear and appropriate?

10. Is the document organized appropriately? If not, what improvements are needed?

11. Is the language of the manuscript acceptable as written? If not, what improvements are needed?

12. Are you aware of any scientific data reported in governmental publications, databases, peer-reviewed journals, or other sources that should be included within this document?

13. What is your final recommendation for this manuscript?

Public Comment Period: Comments must be received by June 11, 2010.

ADDRESSES: You may submit comments, identified by docket number NIOSH–153–A, by any of the following methods:

- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

- *Facsimile:* (513) 533–8285.
- *E-mail: nioshdocket@cdc.gov.* All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226. A complete electronic docket containing all comments submitted will be available on the NIOSH Web page at *http://www.cdc.gov/niosh/docket,* and comments will be available in writing by request. NIOSH includes all comments received without change in the docket, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: G. Scott Dotson, NIOSH, Robert A Taft Laboratories, MS–C32, 4676 Columbia Parkway, Cincinnati, OH 45226, telephone (513)533–8540.

SUPPLEMENTARY INFORMATION: In 2009, NIOSH published Current Intelligence Bulletin (CIB) 61: A Strategy for Assigning New NIOSH Skin Notations [NIOSH 2009–147; *available at http://www.cdc.gov/niosh/docs/2009–147/pdfs/2009–147.pdf*]. The CIB presents a strategic framework that is a form of hazard identification that has been designed to do the following:

1. Ensure that the assigned skin notations reflect the contemporary state of scientific knowledge.
2. Provide transparency behind the assignment process.
3. Communicate the hazards of chemical exposures of the skin.
4. Meet the needs of health professionals, employers, and other interested parties in protecting workers from chemical contact with the skin.

This strategy involves the assignment of multiple skin notations for distinguishing systemic (SYS), direct (DIR), and sensitizing (SEN) effects caused by exposure of skin (SK) to chemicals. Chemicals that are highly or extremely toxic and may be potentially lethal or life-threatening following exposures of the skin are designated with the systemic subnotation (FATAL). Potential irritants and corrosive chemicals are indicated by the direct effects subnotations (IRR) and (COR), respectively. Thus with the new strategy, chemicals labeled as SK: SYS are recognized to contribute to systemic toxicity through dermal absorption. Chemicals assigned the notation SK: SYS (FATAL) have been identified as highly or extremely toxic and have the potential to be lethal or life-threatening following acute contact with the skin. Substances identified to cause direct effects (*i.e.*, damage or destruction) to the skin limited to or near the point of contact are labeled SK: DIR, and those resulting in skin irritation and corrosion at the point of contact are labeled as SK: DIR (IRR) and SK: DIR (COR), respectively. The SK: SEN notation is used for substances identified as causing or contributing to allergic contact dermatitis (ACD) or other immune-mediated responses, such as airway hyper reactivity (asthma). Candidate chemicals may be assigned more than one skin notation when they are identified to cause multiple effects resulting from skin exposure. For example, if a chemical is identified as corrosive and also contributes to systemic toxicity, it will be labeled as SK: SYS–DIR (COR). When scientific data for a chemical indicate that skin exposure does not produce systemic, direct, or sensitizing effects, the compound will be assigned the notation (SK). The ID$^{(SK)}$ notation is assigned to indicate that insufficient data on the health hazards associated with skin exposure to a substance exist at the time of the review to determine whether the chemical has the potential to act as a systemic, direct, or sensitizing agent. The ND notation indicates that a chemical has not been evaluated by the strategy outlined in this CIB and that the health hazards associated with skin exposure are unknown.

Historically, skin notations have been published in the NIOSH Pocket Guide to Chemical Hazards [NIOSH 2005–149]. This practice will continue with the NIOSH skin notation assignments for each evaluated chemical being integrated as they become available. A support document called a Skin Notation Profile has been developed for each evaluated chemical. The Skin Notation Profile for a chemical is intended to provide information supplemental to the skin notation, including a summary of all relevant data used to aid in determining the hazards associated with skin exposures.

NIOSH seeks comments on the draft skin notation assignments and Skin Notation Profiles for 22 chemicals. The draft Skin Notation Profiles were developed to provide the scientific rationale behind the hazard-specific skin notation (SK) assignments for the following chemicals:

Document #	Substance(s)
A–01	1,3-Dichloropropene (CAS# 542–75–6).
A–02	Phenol (CAS# 108–95–2).
A–03	Hydrogen fluoride/hydrofluoric acid (CAS# 7664–39–3).
A–04	Dinitrotoluene, (CAS# 25321–14–6); 2,4–. Dinitrotoluene (CAS# 121–14–2); 2,6–. Dinitrotoluene (CAS# 606–20–2).
A–05	Acrylamide (CAS# 79–06–1).
A–06	Acrylonitrile (CAS# 107–13–1).
A–07	Metallic Chromium and other Substances containing Hexavalent Chromium [Cr(VI)] CAS# 7440–47–3; 18540–29–9).
A–08	m,p,o-Dinitrobenzene (CAS# 99–65–0; CAS# 528–29–0; CAS# 100–25–4).
A–09	Epichlorohydrin (CAS# 106–89–8).
A–10	Ethylene glycol dinitrate (CAS# 628–96–6).
A–11	Bisphenol A (CAS# 80–05–7).
A–12	Formaldehyde (CAS# 50–00–0).
A–13	Hydrazine (CAS# 302–01–2).
A–14	Nitroglycerin (CAS# 55–63–0).
A–15	Nonane (CAS# 111–84–2).
A–16	Glutaraldehyde (CAS# 111–30–8).
A–17	Sodium hydroxide (CAS# 1310–73–2).
A–18	Trichloroethylene (CAS# 79–01–6).
A–19	Methyl cellosolve (CAS# 109–86–4).
A–20	2-Butoxyethanol (CAS# 111–76–2).
A–21	2-Ethoxyethanol (CAS# 110–80–5).
A–22	p-Phenylenediamine (CAS # 106–50–3).

Each Skin Notation Profile provides a detailed summary of the health hazards of skin contact and rationale for the proposed SK assignment with the chemical(s)-of-interest.

Dated: April 19, 2010.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2010–9693 Filed 4–26–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

Correction

In notice document 2010–7170 beginning on page 16813 in the issue of Friday, April 2, 2010, make the following correction:

On page 16814, in the first column, in the list following the second full paragraph, the listings for ACM Medical Laboratory, Inc. and Advanced Toxicology Network were combined.

The listings should be separated and read as follows:

ACM Medical Laboratory, Inc.,160 Elmgrove Park,Rochester, NY 14624,585-429-2264;

Advanced Toxicology Network,3560 Air Center Cove, Suite 101,Memphis, TN 38118,901-794-5770 / 888-290-1150;

[FR Doc. C1–2010–7170 Filed 4–26–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0281]

Certificate of Alternative Compliance for the Ferry Boat CHARLEVOIX

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the ferry boat CHARLEVOIX as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on April 2, 2010.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0281 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LCDR Wm. Erik Pickering, District Nine, Prevention Branch, U.S. Coast Guard, telephone 216–902–6050. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed under Title 33 of the Code of Federal Regulations, Parts 81 and 89, has been issued for the ferry boat CHARLEVOIX. Full compliance with 72 COLREGS and the Inland Rules Act would hinder the vessel's ability to operate as designed. Because of the design of the ferry boat CHARLEVOIX, operation of its whistle at the level required in Rule 34 (g) of 72 COLREGS and the Inland Rules Act (33 USC 2001 *et. seq.*) would subject passengers and crew to dangerous and unacceptable decibel levels. The National Institute for Occupational Safety and Health states that exposure to sounds over 85 decibels for periods greater than eight hours will cause permanent hearing damage. The crew on the ferry boat CHARLEVOIX works eight hour shifts. Thus, if the ferry boat CHARLEVOIX were to comply with Rule 34 (g) its crew would potentially suffer permanent hearing loss.

The Commandant, U.S. Coast Guard, certifies that full compliance with the Inland Rules Act would interfere with the normal functions/intent of the vessel and would not significantly enhance the safety of the vessel's operation. Requiring the vessel to sound a prolonged whistle/horn blast at the required decibel level prior to each departure (approximately every 5.3 minutes, in a 16 hour period/7 days per week operation) would subject the crew and passengers to unacceptable decibel levels, and not improve overall vessel safety.

The Certificate of Alternative Compliance allows for the reducing of the intensity of the required sound signal to 85 decibel when leaving the dock/berth during normal operations provided the following conditions are met: A secondary whistle must be installed that meets the requirements of Rule 34 (g) and be used when operating in restricted visibility as per Rule 35 or to reduce the risk of collision as per Rule 34 (d).

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: April 2, 2010.

L.W. Thomas,

Captain, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Ninth Coast Guard District.

[FR Doc. 2010–9682 Filed 4–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3311–EM; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Rhode Island (FEMA–3311–EM), dated March 30, 2010, and related determinations.

DATES: *Effective Date:* April 12, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective April 12, 2010.

(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. 2010–9726 Filed 4–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1894–DR; Docket ID FEMA–2010–0002]

Rhode Island; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Rhode Island (FEMA–1894–DR), dated March 29, 2010, and related determinations.

DATES: *Effective Date:* April 12, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective April 12, 2010.

(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. 2010–9727 Filed 4–26–10; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0303]

National Maritime Security Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Maritime Security Advisory Committee (NMSAC). This Committee advises and makes recommendations on national maritime security matters to the Secretary of Homeland Security via the Commandant of the United States Coast Guard.

DATES: Completed application forms should reach us on or before May 31, 2010.

ADDRESSES: Interested candidates may request an application form by one of the following methods:

- *E-mail: NMSAC@uscg.mil*, Subject line: NMSAC Application Form Request.
- *Fax:* 202–372–1990, ATTN: NMSAC DFO/EA, please provide name, mailing address and telephone and fax numbers to send application forms to.
- *Mail:* Send written requests for forms and completed application packets to: USCG–NMSAC Designated Federal Officer, CG–5441, Room 5302, U.S. Coast Guard Headquarters, 2100 Second St., SW., Stop 7581, Washington, DC 20593–7581, please provide name, mailing address and telephone and fax numbers to send application forms to.
- *Internet:* To download a PDF or MS-Word application form visit NMSAC Web site at *http://www.homeport.uscg.mil* under Missions>Maritime Security>National Maritime Security Advisory Committee>Member Application Forms.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Commandant (CG–5441), NMSAC Assistant Designated Federal Officer, U.S. Coast Guard Headquarters, 2100 Second St., SW., Stop 7581, Washington, DC 20593–7581, *ryan.f.owens@uscg.mil*, Phone: 202–372–1108, Fax: 202–372–1990.

SUPPLEMENTARY INFORMATION: The NMSAC is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA) 5 U.S.C. (Pub. L. 92–463). The NMSAC advises, consults with, reports to, and makes recommendations to the Secretary on matters relating to national maritime security. Such matters may include, but are not limited to:

- Developing a national strategy and policy to provide for efficient, coordinated and effective action to deter and minimize damage from maritime transportation security incidents;
- Recommending actions required to meet current and future security threats to ports, vessels, facilities, waterways and their associated inter-modal transportation connections and critical infrastructure;
- Promoting international cooperation and multilateral solutions to maritime security issues;
- Addressing security issues and concerns brought to the Committee by segments of the marine transportation industry, or other port and waterway stakeholders, and;
- Examining such other matters, related to those listed above, that the Secretary may charge the Committee with addressing.

The full Committee normally meets at least two to three times per fiscal year. Working group meetings and teleconferences are held more frequently, as needed. It may also meet for extraordinary purposes.

We will consider applications for seven positions that expired or became vacant January 1, 2010. Current members are eligible to serve an additional term of office but must re-apply in accordance with this notice. Applicants with experience in one or more of the following sectors of the marine transportation industry with a minimum of five years experience in their field are encouraged to apply:

- Port Operations Management/Port Authorities.
- Maritime Security Operations and Training.
- Marine Salvage Operations.
- Maritime Security Related Academics/Public Policy.
- Marine Facilities and Terminals Security Management.
- Vessel Owners/Operators.
- Maritime Labor.
- International and Inter-modal Supply Chain.
- Maritime Hazardous Materials Handling/Shipping.
- State and Local Government (Homeland Security, Law Enforcement, First Response).

Registered lobbyists are not eligible to serve on Federal Advisory Committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 110–81, as amended). Each member serves for a term of three years. Members may serve consecutive terms. All members serve at

their own expense and receive no salary. While attending meetings or when otherwise engaged in committee business, members will be reimbursed for travel and per diem expenses as permitted under applicable Federal travel regulations.

In support of the policy of the Coast Guard on gender and ethnic nondiscrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are selected as a non-representative member, or as a member who represents the general public, you will be appointed and serve as a Special Government Employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as an SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official (DAEO) or the DAEO's designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send a completed application to CAPT Kevin C. Kiefer, Designated Federal Officer (DFO) of the National Maritime Security Advisory Committee. Send the application in time for it to be received by the DFO on or before May 31, 2010.

A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov*, enter the docket number for this notice (USCG–2010–0303) in the Search box, and click "Go >>."

Dated: April 21, 2010.

K.C. Kiefer,

Captain, U.S. Coast Guard, Office of Port and Facility Activities.

[FR Doc. 2010–9683 Filed 4–26–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; National Geospatial Program: The National Map

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of an extension of an Information Collection (1028–0092).

SUMMARY: We (the U.S. Geological Survey) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. As required by the Paperwork Reduction Act of 1995 (PRA) we may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before May 27, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Use OMB Control Number 1028–0092 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information please contact Teresa Dean by telephone at (703) 648–4825 or *tdean@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS will provide funding for the collection of orthoimagery and elevation data. We will accept applications from State, local, or tribal governments; nonprofit, nongovernmental organizations; and academic institutions to advance the development of *The National Map* and other national geospatial databases. This effort will support our need to supplement ongoing data collection activities to respond to an increasing demand for more accurate and current elevation data and orthoimagery. Respondents will submit applications and project narrative via Grants.gov. Grant recipients must complete quarterly reports and a final technical report at the end of the project period. All application instructions and forms are available on the Internet through Grants.gov (*http://www.grants.gov*). Hard/paper submissions and electronic copies submitted via e-mail will not be accepted under any circumstances. All reports will be accepted electronically via e-mail.

II. Data

OMB Control Number: 1028–0092.

Title: National Geospatial Program: The National Map.

Type of Request: Extension of a currently approved collection.

Respondent Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Applications are submitted in response to a NOFA; reports are submitted quarterly and at the end of the project period.

Description of Respondents: State, local, and tribal governments; private and non-profit firms; and academic institutions.

Estimated Number of Annual Responses: 175 (75 applications, 80 quarterly reports and 20 final reports).

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 4,780 hours. We expect to receive approximately 75 applications. It will take each applicant approximately 60 hours to complete the narrative and prepare supporting documents. This includes the time for project conception and development, proposal writing, reviewing, and submitting the proposal application through Grants.gov (totaling 4,500 burden hours). We anticipate awarding 20 grants per year. The award recipients must submit quarterly and final reports during the project. Within 7 days of the beginning of each quarter, a report must be submitted summarizing the previous quarter's progress. The quarterly report will take at least 1 hour to prepare (totaling 80 burden hours). A final report must be submitted within 90 calendar days of the end of the project period. We estimate that it will take approximately 10 hours to complete a final report (totaling 200 hours).

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

On December 30, 2009, we published a **Federal Register** notice (74 FR 69134) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on March 1, 2010. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and

clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at anytime.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated April 21, 2010,

Julia Fields,

Deputy Director, National Geospatial Program.

[FR Doc. 2010–9698 Filed 4–26–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L19900000 EX0000]

Renewal of Approved Information Collection, OMB Control Number 1004–0194

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0194 under the Paperwork Reduction Act. This control number covers paperwork requirements in 43 CFR subpart 3809.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before May 27, 2010.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0194), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to: *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Adam Merrill, Bureau of Land Management, Division of Solid Minerals, at (202) 912–7044 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, to contact Mr. Merrill.

SUPPLEMENTARY INFORMATION:

Title: Surface Management Activities under the General Mining Law (43 CFR subpart 3809).

Forms:

- Form 3809–1, Surface Management Surety Bond;
- Form 3809–2, Surface Management Personal Bond;
- Form 3809–4, Bond Rider Extending Coverage of Bond to Assume Liabilities for Operations Conducted by Parties Other Than the Principal;
- Form 3809–4a, Surface Management Personal Bond Rider; and
- From 3809–5, Notification of Change of Operator and Assumption of Past Liability.

OMB Control Number: 1004–0194.

Abstract: This collection of information enables the BLM to determine whether operators and mining claimants are meeting their responsibility to prevent unnecessary or undue degradation while conducting exploration and mining activities on public lands under the General Mining Law (30 U.S.C. 22—54.). It also enables the BLM to obtain financial guarantees for the reclamation of public lands. This collection of information is found at 43 CFR subpart 3809 and in the forms listed above.

Frequency: On occasion.

Description of Respondents: Operators and mining claimants.

60-Day Notice: As required in 5 CFR 1320.8(d), we published a 60-day notice in the **Federal Register** on January 8, 2010 (75 FR 1071), soliciting comments from the public and other interested parties. The comment period closed on March 9, 2010. We received one comment. The comment was a general invective about the Federal government, the Department of the Interior, and the BLM. It did not address, and was not germane to, this information collection. Therefore, we have no response to the comment.

Type of Review: Revision of a currently approved information collection.

Affected Public: Operators and mining claimants.

Obligation to Respond: Required to obtain or retain benefits.

Annual Responses: 1,495 responses.

Completion Time per Response: Varies from 1 hour to 4,960 hours.

Annual Burden Hours: 183,808.

Annual Non-hour Burden Cost: $4,780 for notarizing Forms 3809–2 and 3809–4a.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0194 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–9705 Filed 4–26–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Grant Program To Assess, Evaluate and Promote Development of Tribal Energy and Mineral Resources

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Solicitation of proposals.

SUMMARY: The Energy and Mineral Development Program (EMDP) provides funding to Indian tribes with the mission goal of assessing, evaluating,

and promoting energy and mineral resources on Indian trust lands for the economic benefit of Indian mineral owners. To achieve these goals, the Department of the Interior's Office of Indian Energy and Economic Development (IEED), through its Division of Energy and Mineral Development (DEMD) office, is soliciting proposals from tribes. The Department will use a competitive evaluation process to select several proposed projects to receive an award.

DATES: Submit grant proposals on or before June 28, 2010. We will not consider grant proposals received after this date.

ADDRESSES: Mail or hand-carry grant proposals to the Department of the Interior, Division of Energy and Mineral Development, Attention: Energy and Mineral Development Program, 12136 W. Bayaud Avenue, Suite 300, Lakewood, CO 80228, or e-mail to Robert Anderson at *robert.anderson@bia.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the EMDP program, or have technical questions about the commodity you wish to assess or develop, please contact the appropriate DEMD persons listed below:

- *General Questions about the EMDP Program and Submission Process:* Robert Anderson, *Tel:* (720) 407–0602; e-mail: *robert.anderson@bia.gov;*
- *For Additional Copies of the Proposal Writing Guidelines Manual:* Tahnee KillsCrow, *Tel:* (720) 407–0655; e-mail: *tahnee.killscrow@bia.gov;*
- *Mineral Projects (Precious Metals, Sand and Gravel):* Lynne Carpenter, *Tel:* (720) 407–0605, e-mail: *lynne.carpenter@bia.gov,* or David Holmes, *Tel:* (720) 407–0609, e-mail: *david.holmes@bia.gov;*
- *Conventional Energy Projects (Oil, Natural Gas, Coal):* Bob Just, *Tel:* (720) 407–0611, e-mail: *robert.just@bia.gov;*
- *Renewable Energy Projects (Biomass, Wind, Solar):* Winter Jojola-Talburt, *Tel:* (720) 407–0668, e-mail: *winter.jojola-talburt@bia.gov;*
- *Geothermal Energy:* Roger Knight, *Tel:* (720) 407–0613, e-mail: *roger.knight@bia.gov.*

SUPPLEMENTARY INFORMATION:

A. Background
B. Items To Consider Before Preparing an Application for an Energy and Mineral Development Grant
C. How To Prepare an Application for Energy and Mineral Development Funding
D. Submission of Application in Digital Format
E. Application Evaluation and Administrative Information
F. When To Submit
G. Where To Submit
H. Transfer of Funds
I. Reporting Requirements for Award Recipients
J. Requests for Technical Information

A. Background

Section 103 of the Indian Self-Determination Act, Public Law 93–638, as amended by Public Law 100–472 contains the contracting mechanism for energy and mineral development-funded programs.

The IEED, through the DEMD office located in Lakewood, Colorado, administers and manages the EMDP program. The objectives of this solicitation are to receive proposals for energy and mineral development projects in the areas of exploration, assessment, development, feasibility and market studies.

Energy includes conventional energy resources (such as oil, gas, coal, uranium, and coal bed gas) and renewable energy resources (such as wind, solar, biomass, hydro and geothermal). Mineral resources include industrial minerals (*e.g.,* sand, gravel), precious minerals *(e.g.,* gold, silver, platinum), base minerals (*e.g.,* lead, copper, zinc), and ferrous metal minerals (*e.g.,* iron, tungsten, chromium).

This year, there will be an emphasis placed on renewable energy projects, as a portion of DEMD's grant budget is earmarked for renewable energy. Also, there are funds set aside for construction minerals, such as sand and gravel. However, the project's outcome should also have an impact on creating new jobs and income for the tribal community. Both objectives will have an influence on DEMD's selection of projects to fund.

DEMD's goal is to assist tribes to achieve economic benefits from their energy and mineral resources. The purpose of the program is to expand the knowledge base through which tribes, either by themselves or with industry partners, can bring new energy and mineral resources into the marketplace through a comprehensive understanding of their undeveloped resource potential. A strong knowledge base will also ensure that new resources are produced in an environmentally acceptable manner.

Each year DEMD usually receives more energy and mineral development applications than can be funded in that year. DEMD has discretion for awarding funds and requires that the tribes compete for such funds on an annual basis. DEMD has established ranking and paneling procedures with defined criteria for rating the merits of proposals to make the award of limited funds as fair and equitable as possible.

The EMDP program is funded under the non-recurring appropriation of the Bureau of Indian Affairs' (BIA) budget. Congress appropriates funds for EMDP funding on a year-to-year basis. Thus, while some projects may extend over several years, funding for successive years depends on each fiscal year's appropriations.

The information collection requirements contained in this notice have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 1076–0174. The authorization expires on April 30, 2013. An agency may not sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number.

B. Items To Consider Before Preparing an Application for an Energy and Mineral Development Grant

1. Trust Land Status

EMDP funding can only be made available to tribes whose lands are held in trust or restricted fee by the Federal government. Congress has appropriated these funds for the development of energy and mineral resources only on Indian trust or restricted fee lands.

2. Tribes' Compliance History

DEMD will monitor all EMDP grants for statutory and regulatory compliance to assure that awarded funds are correctly applied to approved projects. Tribes that expend funds on unapproved functions may forfeit remaining funds in that proposal year, and possibly for any future EMDP funding. Consequently, DEMD may request a tribe to provide a summary of any funds it has received in past years through other projects approved by DEMD, and DEMD may conduct a review of prior award expenditures before making a decision on current year proposals.

3. BIA Sanction List

Tribes who are currently under BIA sanction resulting from non-compliance with the Single Audit Act may be ineligible from being considered for an award.

4. Completion of Previous Energy and Mineral Development Projects

Generally, the DEMD will not support nor recommend additional funding for a project until all project functions scheduled for completion the previous

year have been documented by the tribe and reviewed by the DEMD.

Under some circumstances, delays encountered in performing the project that are beyond the control of the tribe or their consultant will be taken into consideration when making decisions on future year EMDP awards. Such acceptable delays may include late delivery of funding awards to the tribal project, difficulty in finding appropriate contractors to perform project functions, permitting issues, and weather delays.

5. Multiple Projects

DEMD will accept more than one application from a tribe for projects, even if the project concerns the same commodity. For example, the tribe may have a viable renewable energy resource, but needs to better define the resource with further exploration work or analysis. Concurrently the tribe also needs to evaluate the market for their resource. In this situation two separate proposals can be submitted. DEMD will apply the same objective ranking criteria to each proposal.

6. Multi-Year Projects

DEMD cannot award multi-year funding for a project. Funding available for the EMDP is subject to annual appropriations by Congress and therefore DEMD can only consider single-year funded projects. Generally, energy and mineral development projects are designed to be completed in one year. It is acceptable that a project may require more than one year to complete due to circumstances such as weather, availability of the consultant, or scope of the project.

EMDP projects requiring funding beyond one-year intervals should be grouped into discrete, single-year units of operation, and then submitted as individual proposals for consideration of EMDP award funding. Tribes must be aware, however, that there is no absolute guarantee of EMDP awards being available for future years of a multi-year project due to the discretionary nature of EMDP award funding.

7. Use of Existing Data

DEMD maintains a comprehensive set of tribal data and information. DEMD has spent considerable time and expense in collecting digital land grids, geographic information system (GIS) data and imagery data for many reservations. Monthly well status and production data, geophysical data (such as seismic data), geology and engineering data, etc. are all stored at DEMD's offices. All of these data sets are available to tribes to reduce the cost of their investigations.

Budget line items will not be allowed for data or products that reside at DEMD. The tribe or the tribe's consultant must first check with DEMD for availability of these data sets on the reservation they are investigating. If DEMD does not have a particular data set, then EMDP funds may be used to acquire such data.

When a proposal includes the acquisition of new data, the tribe should thoroughly search for preexisting data to ensure there is no duplication. If older data does exist, it may have considerable value. It may be updated or improved upon, either by the DEMD or by the tribe's consultant.

8. Using Technical Services at DEMD

DEMD has many in-house technical capabilities and services that the tribes may wish to use. All services provided by DEMD are without charge to the tribes. Tribes can obtain maximum benefit from energy and mineral development studies by first using DEMD's services, or by using DEMD services in conjunction with outside consultants. Services available at DEMD include:

- Technical literature search of previous investigations and work performed in and around reservations using reference materials located nearby, such as the U.S. Geological Survey (USGS) library in Denver, Colorado, or the Colorado School of Mines library in Golden, Colorado;
- Well production history analysis, decline curve and economic analysis of data obtained through DEMD's in-house databases;
- Well log interpretation, including correlation of formation tops, identification of producing horizons, and generation of cross-sections;
- Technical mapping capabilities, using data from well log formation tops and seismic data;
- Contour mapping capabilities, including isopachs, calculated grids, color-fill plotting, and posting of surface features, wells, seismic lines and legal boundaries;
- Seismic data interpretation and data processing;
- Three dimensional modeling of mine plans;
- Economic analysis and modeling for energy and solid mineral projects; and
- Marketing studies.

9. What the Energy and Mineral Development Program Cannot Fund

As stated above, these funds are specifically for energy and mineral development project work only. Examples of elements that cannot be funded include:

- Establishing or operating a tribal office, and/or purchase of office equipment not specific to the assessment project. Tribal salaries may be included only if the personnel are directly involved in the project and only for the duration of the project;
- Indirect costs and overhead as defined by the Federal Acquisition Regulation (FAR);
- Purchase of equipment that is used to perform the EMDP project, such as computers, vehicles, field gear, *etc.* (however, the leasing of this type of equipment for the purpose of performing energy and mineral development is allowed);
- Purchasing and/or leasing of equipment for the development of energy and mineral resources. This would include such items as well drilling rigs, backhoes, bulldozers; cranes, trucks, etc.
- Drilling of wells for the sale of hydrocarbons, geothermal resources, other fluid and solid minerals (however, funds may be used for the drilling of exploration holes for testing, sampling, coring, or temperature surveys);
- Legal fees;
- Application fees associated with permitting;
- Research and development of unproved technologies;
- Training;
- Contracted negotiation fees;
- Purchase of data that is available through DEMD;
- Any other activities not authorized by the tribal resolution or by the award letter.

10. Who Performs Energy and Mineral Development Studies?

The tribe determines who they wish to perform the energy and mineral development work, such as a consultant, a private company, or other sources described in the list below. The tribe may also request the BIA to perform the work.

A tribe has several choices in contracting work performed under an energy and mineral development project:

- A private company (although that company must not be competing for exploration or development rights on the tribe's lands);
- An experienced and qualified scientific consultant;
- A Federal government agency (such as USGS or the U.S. Department of Energy (DOE) or a State government agency (such as a State geological survey).

There are no requirements or restrictions on how the tribe performs their contracting function for the consultant or company. The tribe is free to issue the contract through a sole source selection or through competitive bidding. This determination will depend on the tribe's own policies for contracting procedures.

C. How To Prepare an Application for Energy and Mineral Development Funding

Each tribe's application must meet the criteria in this notice. A complete energy and mineral development request must contain the following three components:

- A current tribal resolution authorizing the proposed project;
- A proposal describing the planned activities and deliverable products; and
- A detailed budget estimate.

DEMD will consider any funding request that does not contain all of the mandatory components to be incomplete and will return it to the tribe with an explanation. The tribe will then be allowed to correct all deficiencies and resubmit the proposal for consideration on or before the deadline.

A detailed description of each of the required components follows.

1. Mandatory Component 1: Tribal Resolution

The tribal resolution must be current, and must be signed. It must authorize tribal approval for an EMDP proposed project in the same fiscal year as that of the energy and mineral development proposal and must explicitly refer to the assessment proposal being submitted. The tribal resolution must also include:

(a) A description of the commodity or commodities to be studied;

(b) A statement that the tribe is willing to consider development of any potential energy or mineral resource discovered;

(c) A statement describing how the tribe prefers to have the energy or mineral program conducted (*i.e.,* by DEMD in-house professional staff only, by DEMD staff in conjunction with tribal professional staff, by private contractors or consultants, or through other acceptable means).

(d) A statement that the tribe will consider public release of information obtained from the energy and mineral development study. (Public release is meant to include publications, a poster session, attending a property fair, or giving an oral presentation at industry or Federal meetings and conferences. It does *not* mean providing copies of the data or reports to any individual, private company or other government agency without express written permission from the tribal government.)

Note: Any information in the possession of DEMD or submitted to DEMD throughout the EMDP process, including the final energy and mineral development study, constitutes government records and may be subject to disclosure to third parties under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of the Interior's FOIA regulations at 43 CFR part 2, unless a FOIA exemption or exception applies or other provisions of law protect the information. A tribe may, but is not required to, designate information it submits as confidential commercially or financially sensitive information, as applicable, in any submissions it makes throughout the EMDP process. If DEMD receives a FOIA request for this information, it will follow the procedures in 43 CFR part 2.

2. Mandatory Component 2: Energy and Mineral Development Proposal

A tribe may present their energy and mineral development proposal in any form they wish, so long as the proposal contains a description of planned activities and deliverable products that can be accomplished within the fiscal year for which funding is being requested. The proposal should be well organized, contain as much detail as possible, yet be presented succinctly to allow a quick and thorough understanding of the proposal by the DEMD ranking team.

Many tribes utilize the services of a staff geoscientist or private consultant to prepare the technical part of the proposal. However, some tribes may not have these resources and therefore, are urged to seek DEMD's technical assistance in preparing their EMDP proposal. Tribes who want technical assistance from DEMD should make this request in writing to the address provided in the **ADDRESSES** section of this notice. The request should be made as early as possible to give DEMD time to provide the assistance.

The proposal should include the following sections:

(a) Overview and Technical Summary of the Project: Prepare a short summary overview of the proposal that includes the following:

—Elements of the proposed study;
—Reasons why the proposed study is needed;
—Total requested funding;
—Responsible parties for technical execution and administration of the proposed project; and
—A tribal point of contact for the project and contact information.

(b) *Technical Summary of Project:* Provide a technical description of the project area, if sufficient information exists. Give examples of a typical resource occurrence to be examined under the proposal, such as the oil or gas deposit, *etc.* If possible, include criteria applicable to these types of resource occurrences.

- *Multi-Phased Studies:* Explain whether this assessment request will begin a new study or continue a study that has already been partially completed. Also explain how long the study will last. [**Note:** DEMD cannot guarantee funding for a project from one fiscal year to the next.]
- *Known Energy/Mineral Resource:* If a known energy or mineral deposit exists or produces near the reservation, discuss the possible extension or trend of the deposit onto the reservation.
- *Existing Information:* Acknowledge any existing mineral exploration information and provide references. The proposed new study should not duplicate previous work.
- *Environmental or Cultural Sensitive Areas:* Describe and verify if the resources are located in an archeological, environmentally or culturally sensitive area of the reservation. The tribe must also assist DEMD with the Environmental Assessment phase of the proposed project.

(c) *Project Objective, Goals and Scope of Work:* Describe why the tribe needs the proposed energy and mineral development. Examples may include:

- Discussion of the short and long term benefits to the tribe.
- Initial identification of an energy or mineral resource for possible development.
- Additional information regarding the potential resource required for tribal decision making commitments on development proposals.
- Feasibility studies and market analyses on resource development potentials.
- Support for environmental studies.
- Support and technical assistance as part of the contract negotiations process.
- Description of the work proposed, and the project goals and objectives expected to be achieved by the proposed project.
- Description of the location on the reservation where the work will be done. Include relevant page size maps and graphs.
- Detailed description of the scope of work and justification of a particular method. For example, if a geochemical sampling survey is planned, an explanation might include the quantity samples to be obtained, what type of sampling will be targeted, the soil horizons to be tested, general location of the projected sampling, how the

samples are to be analyzed and why geochemistry was chosen as an exploration technique. Furnish similar types of explanations and details for geophysics, geologic mapping, core drilling, or any other type of assessment planned.

(d) *Deliverable Products:* Describe all deliverable products that the proposed assessment project will generate, including all technical data to be obtained during the study. Describe the types of maps to be generated and the proposed scales. Also discuss how these maps and cross-sections will help define the energy and mineral potential on the reservation. Discuss any planned status reports as well as the parameters of the final report.

(e) *Resumes of Key Personnel:* If the tribe is using a consultant services, provide the resumes of key personnel who will be performing the project work. The resumes should provide information on each individual's expertise. If subcontractors are used, these should also be disclosed.

3. Mandatory Component 3: Detailed Budget Estimate

A detailed budget estimate is required for the funding level requested. The detail not only provides the tribe with an estimate of costs, but it also provides DEMD with the means of evaluating the cost-benefit of each project. This line-by-line budget must fully detail all projected and anticipated expenditures under the EMDP proposal. The ranking committee reviews each budget estimate to determine whether the budget is reasonable and can produce the results outlined under the proposal.

Each proposed project function should have a separate budget. The budget should break out contract and consulting fees, fieldwork, lab and testing fees, travel and all other relevant project expenses. Preparation of the budget portion of an EMDP proposal should be considered a top priority. EMDP proposals that include sound budget projections will receive a more favorable ranking over those proposals that fail to provide appropriate budget projections.

The budget page(s) should provide a comprehensive breakdown for those project line items that involve several components, or contain numerous sub-functions.

(a) *Contracted Personnel Costs.* This includes all contracted personnel and consultants, their respective positions and time (staff-hour) allocations for the proposed functions of a project.

- Personnel funded under the Public Law 93–638 Energy and Mineral Development Program (EMDP) must have documented professional qualifications necessary to perform the work. Position descriptions or resumes should be attached to the budget estimate.
- If a consultant is to be hired for a fixed fee, the consultant's expenses should be itemized as part of the project budget.
- Consultant fees must be accompanied by documentation that clearly identifies the qualifications of the proposed consultants, how the consultant(s) are to be used, and a line item breakdown of costs associated with each consultant activity.

(b) *Travel Estimates.* Estimates should be itemized by airfare, vehicle rental, lodging, and per diem, based on the current federal government per diem schedule.

(c) *Data Collection and Analysis Costs.* These costs should be itemized in sufficient detail for the reviewer to evaluate the charges. For example, break down drilling and sampling costs in relation to mobilization costs, footage rates, testing and lab analysis costs per core sample.

(d) *Other Expenses.* Include computer rental, report generation, drafting, and advertising costs for a proposed project.

D. Submission of Application in Digital Format

Submit the application, including the budget pages, in digital form. DEMD will return proposals that are submitted without the digital components.

Acceptable formats are Microsoft Word and Adobe Acrobat PDF on compact disks (CDs) or floppy disks. The budget must be submitted in a Microsoft Excel spreadsheet.

Each file must be saved with a filename that clearly identifies the file being submitted. File name extensions must clearly indicate the software application used in preparing the documents (*e.g.,* doc, .pdf).

Documents that require an original signature, such as cover letters, tribal resolutions, and other letters of tribal authorization can be submitted in hard copy (paper) form.

If you have any additional questions concerning the Energy and Mineral Development Program proposal submission process, please contact Robert Anderson at (720) 407–0602.

E. Application Evaluation and Administrative Information

1. Administrative Review

Upon receiving an application, DEMD will determine whether it contains the prescribed information, includes a tribal resolution, contains sufficient technical and scientific information to permit an evaluation, and does not duplicate or overlap previous or current funded EMDP projects.

DEMD staff may return an application that does not include all information and documentation required within this notice. During the review of a proposal, DEMD may request the submission of additional information.

2. Ranking Criteria

Proposals will be formally evaluated by a Review and Ranking Panel using the six criteria listed below. Each criterion provides a percentage of the total maximum rating of 100 points.

(a) *Resource Potential; 10 points.* If the resource is determined not to exist on the reservation, then the proposal will be rejected. The panel will base their scoring on both the information provided by the tribe and databases maintained by DEMD. It is critical that the tribe attempt to provide all pertinent information in their proposal in order to ensure that an accurate review of the proposal is accomplished. The reviewers are aware that many tribes have little energy or mineral resource data on reservation lands, and in some cases, resource data does not exist. However, geologic and historical mineral development data exist throughout most of the continental U.S. on lands surrounding Indian reservations.

Many times a producing energy or mineral deposit exists outside but near the reservation boundary. The geologic setting containing the resource may extend onto the reservation, regardless of the size of the reservation. This would suggest potential of finding similar resources on the reservation. In some cases, available data on non-reservation lands may allow for a scientifically acceptable projection of favorable trends for energy or mineral occurrences on adjacent Indian lands.

For renewable energy proposals, this factor applies to conditions favorable for the economic development of the renewable energy source being studied.

(b) *Marketability of the Resource; 20 points.* Reviewers will base their scoring on both the short- and long-term market conditions of the resources. Reviewers are aware that marketability of an energy or mineral commodity depends upon existing and emerging market conditions. Industrial minerals such as aggregates, sand/gravel and gypsum are dependent on local and regional economic conditions.

Precious and base metal minerals such as gold, silver, lead, copper and zinc are usually more dependent upon international market conditions. Natural

gas and coal bed methane production depends upon having relatively close access to a transmission pipeline, as does renewable energy to an electric transmission grid.

Coal and crude oil production, on the other hand, carry built-in transportation costs, making those resources more dependent on current and projected energy commodity rates. At any time, some commodities may have a strong sustained market while others experience a weak market environment, or even a market surge that may be only temporary.

Reviewers are aware of pitfalls surrounding long-term market forecasts of energy and mineral resources, so the proposal should address this element fully. Also, short-term forecasts may indicate an oversupply from both national and internationally developed properties, and therefore additional production may not be accommodated. Certain commodities such as electricity may be in high demand in some regional sectors, but the current state of the transmission infrastructure does not allow for additional kilowatts to be handled, thereby hindering a market opportunity.

On the other hand, the potential for improving markets may be suggested by market indicators. Examples of market indicators include price history, prices from the futures markets, rig count for oil and gas, and fundamental factors like supply shortages, political unrest in foreign markets, and changes in technology.

(c) *Economic Benefits Produced by the Project; 35 points.* This year there will be greater emphasis on funding projects that would have an impact on tribal jobs and income. To receive a high score for this ranking criterion, the proposal should clearly state how the project would achieve this result. If the project indirectly creates economic benefits, for example applying royalty income from oil and gas productions to create other tribal businesses, that would satisfy this criterion. Whatever the commodity being studied, the ultimate goal is to collect useful data and information that allows the tribe to stimulate development on their lands. This might occur with industry partners or the tribe may develop the resource themselves.

(d) *Tribes' Willingness to Develop; 10 points:* The tribe's willingness to consider developing any potential resource must be clearly stated in the proposal and the tribal resolution. Note that this is *not* a statement for mandatory development of any potential resource, but just that the tribe is willing to develop. The decision on whether to develop will always lie with the tribe. The willingness-to-develop statement should sufficiently explain how the tribe intends to accomplish this task.

DEMD will also evaluate willingness to develop based upon the tribe's willingness to release energy or mineral data to potential developers.

(e) *Tribal Commitment to the Project; 25 points:* To receive a high score for this criterion, the tribe should explain how it will participate in the study, such as by appointing a designated lead and contact person (especially a person with some knowledge of the technical aspects of the projects, and direct contact with the tribe's natural resource department and tribal council), to be committed to the successful completion of the project.

If the tribe has a strategic plan for development, this should be discussed in the proposal. A strategic plan outlines objectives, goals, and methodology for creating sustainable tribal economic development. The proposal should also explain how the tribe's EMDP proposal fits within that strategic plan.

3. Ranking of Proposals and Award Letters

The EMDP review committee will rank the energy and mineral development proposals using the selection criteria outlined in this section. DEMD will then forward the rated requests to the Director of the IEED (Director) for approval. Once approved, the Director will submit all proposals to the Assistant Secretary—Indian Affairs for concurrence and announcement of awards to those selected tribes, via written notice. Those tribes not receiving an award will also be notified immediately in writing.

F. When To Submit

DEMD will accept applications at any time before the deadline stated in the **DATES** section of this notice, and will send a notification of receipt to the return address on the application package, along with a determination of whether or not the application is complete. DEMD will not consider grant proposals after this date. A date-stamped receipt of submission by the BIA Regional or Agency-level office on or before the announced deadline will also be acceptable.

G. Where To Submit

Submit the energy and mineral development proposals to DEMD at the address listed in the **ADDRESSES** section of this notice. Applicants should also forward a copy of their proposal to their own BIA Agency and Regional offices.

A tribe may fax the cover letter and resolution for the proposal before the deadline, which will guarantee that the proposal will be considered as being received on time. However, DEMD asks that tribes or consultants do not send the entire proposal via fax, as this severely overloads the fax system.

The cover letter should also state that the proposal is being sent via FedEx or mail. An original signature copy must be received in DEMD's office within 5 working days after the deadline, including all signed tribal resolutions and letters of tribal authorization.

BIA Regional or Agency level offices receiving a tribe's submitted EMDP proposal do not have to forward it on to DEMD. It is meant to inform them of a tribe's intent to perform energy or mineral studies using EMDP funding. BIA Regional or Agency offices are free to comment on the tribe's proposal, or to ask DEMD for other information.

H. Transfer of Funds

IEED will transfer a tribe's EMDP award funds to the BIA Regional Office that serves that tribe, via a sub-allotment funding document coded for the tribe's EMDP project. The tribe should anticipate the transfer and be in contact with budget personnel at the Regional and Agency office levels. Tribes receiving EMDP awards must establish a new 638 contract to complete the transfer process, or use an existing 638 contract, as applicable.

I. Reporting Requirements for Award Recipients

1. Quarterly Reporting Requirements

During the life of the EMDP project, quarterly written reports are to be submitted to the DEMD project monitor for the project. The beginning and ending quarter periods are to be based on the actual start date of the EMDP project. This date can be determined between DEMD's project monitor and the tribe.

The quarterly report can be a one- to two-page summary of events, accomplishments, problems and results that took place during the quarter. Quarterly reports are due 2 weeks after the end of a project's fiscal quarter.

2. Final Reporting Requirements

- *Delivery Schedules.* The tribe must deliver all products and data generated by the proposed assessment project to DEMD's office within 2 weeks after completion of the project.
- *Mandatory Requirement to Provide Reports and Data in Digital Form.* DEMD maintains a repository for all energy and mineral data on Indian

lands, much of it derived from these energy and mineral development reports. As EMDP projects produce reports with large amounts of raw and processed data, analyses and assays, DEMD requires that deliverable products be provided in digital format, along with printed hard copies.

Reports can be provided in either Microsoft Word or Adobe Acrobat PDF format. Spreadsheet data can be provided in Microsoft Excel, Microsoft Access, or Adobe PDF formats. All vector figures should be converted to PDF format. Raster images can be provided in PDF, JPEG, TIFF, or any of the Windows metafile formats.

• *Number of Copies.* When a tribe prepares a contract for energy and mineral development, it must describe the deliverable products and include a requirement that the products be prepared in standard format (see format description above). Each energy and mineral development contract will provide funding for a total of six printed and six digital copies to be distributed as follows:

(a) The tribe will receive two printed and two digital copies of the EMDP report.

(b) DEMD requires four printed copies and four digital copies of the EMDP report. DEMD will transmit one of these copies to the tribe's BIA Regional Office, and one copy to the tribe's BIA Agency Office. Two printed and two digital copies will then reside with DEMD. These copies should be forwarded to the DEMD offices in Lakewood, Colorado, to the attention of the "Energy and Mineral Development Program."

All products generated by EMDP studies belong to the tribe and cannot be released to the public without the tribe's written approval. Products include all reports and technical data obtained during the study such as geophysical data, geochemical analyses, core data, lithologic logs, assay data of samples tested, results of special tests, maps and cross sections, status reports, and the final report.

J. Requests for Technical Assistance

DEMD staff may provide technical consultation (*i.e.,* work directly with tribal staff on a proposed project), provide support documentation and data, provide written language on specialized sections of the proposal, and suggest ways a tribe may obtain other assistance, such as from a company or consultant specializing in a particular area of expertise. However, the tribe is responsible for preparing the executive summary, justification, and scope of work for their proposal.

The tribe must notify DEMD in writing that they require assistance, and DEMD will then appoint staff to provide the requested assistance. The tribe's request must clearly specify the type of technical assistance desired.

Requests for technical assistance should be submitted well in advance of the proposal deadline established in the **DATES** section of this solicitation to allow DEMD staff time to provide the appropriate assistance. DEMD will not accept requests for technical assistance that are received after May 27, 2010. Tribes not seeking technical assistance should also attempt to submit their EMDP proposals well in advance of the deadline to allow DEMD staff time to review the proposals for possible deficiencies and allow time to contact the tribe with requests for revisions to the initial submission.

Dated: April 8, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–9663 Filed 4–26–10; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0018]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices for calendar year 2008.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require MMS to determine major portion prices and notify industry by publishing the prices in the **Federal Register.** The regulations also require MMS to publish a due date for industry to pay additional royalties based on the major portion prices. This notice provides major portion prices for the 12 months of calendar year 2008.

DATES: The due date to pay additional royalties based on the major portion prices is June 28, 2010.

FOR FURTHER INFORMATION CONTACT: John Barder, Manager, Team B, Western Audit and Compliance, Minerals Revenue Management; telephone (303) 231–3702; fax number (303) 231–3755; e-mail *John.Barder@mms.gov;* or Mike Curry, Team B, Western Audit and Compliance, Minerals Revenue Management; telephone (303) 231–3741; fax (303) 231–3755; e-mail *Michael.Curry@mms.gov.* Mailing address: Minerals Management Service, Minerals Revenue Management, Western Audit and Compliance Management, Team B, P.O. Box 25165, MS 62220B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled "Amendments to Gas Valuation Regulations for Indian Leases" at 64 FR 43506 with the effective date January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii) (2009). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If you do not pay the additional royalties by the due date, MMS will bill you late payment interest under 30 CFR 218.54. The interest will accrue from the due date until MMS receives your payment and an amended Form MMS–2014. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS–Designated areas	Jan 2008	Feb 2008	Mar 2008	Apr 2008
Blackfeet Reservation	6.18	7.00	7.50	8.28
Fort Belknap	6.40	6.65	6.87	6.97
Fort Berthold	7.28	7.84	8.76	9.48
Fort Peck Reservation	9.05	9.72	10.41	10.94

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE—Continued

MMS–Designated areas	Jan 2008	Feb 2008	Mar 2008	Apr 2008
Navajo Allotted Leases in the Navajo Reservation	7.04	7.74	8.35	8.77
Rocky Boys Reservation	5.81	6.38	7.00	7.41
Ute Tribal Leases in the Uintah and Ouray Reservation	5.74	6.80	7.46	7.66
MMS–Designated areas	**May 2008**	**Jun 2008**	**Jul 2008**	**Aug 2008**
Blackfeet Reservation	8.94	9.79	10.95	8.39
Fort Belknap	7.20	7.54	7.54	7.54
Fort Berthold	10.69	11.62	10.36	7.63
Fort Peck Reservation	12.21	12.25	13.35	10.31
Navajo Allotted Leases in the Navajo Reservation	9.54	10.40	11.49	7.82
Rocky Boys Reservation	8.18	9.28	7.95	5.70
Ute Tribal Leases in the Uintah and Ouray Reservation	8.53	8.46	8.72	6.57
MMS–Designated areas	**Sep 2008**	**Oct 2008**	**Nov 2008**	**Dec 2008**
Blackfeet Reservation	6.65	5.58	5.23	5.00
Fort Belknap	2.63	6.18	6.13	5.99
Fort Berthold	6.19	5.92	5.69	5.54
Fort Peck Reservation	8.94	7.21	6.15	5.46
Navajo Allotted Leases in the Navajo Reservation	6.27	4.50	3.44	5.09
Rocky Boys Reservation	4.66	4.41	4.13	3.91
Ute Tribal Leases in the Uintah and Ouray Reservation	1.53	2.98	2.50	4.33

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the MMS Web site at *http://www.mrm.mms.gov/ReportingServices/PDFDocs/991201.pdf.*

Dated: April 2, 2010.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. 2010–9757 Filed 4–26–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–NCTC–2009–N285; ABC–92/97300–1661–0029]

National Conservation Training Center Logo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce our adoption of a representation logo for the Fish and Wildlife Service's National Conservation Training Center (NCTC, Center) in Shepherdstown, West Virginia. We will use this new logo as the Center's official graphic representation, for the specific purpose of providing a unified, consistent visual image for the Center's training products and other items, including course materials, hospitality products, artwork, and other promotional materials that identify the Center and support its mission.

DATES: Effective April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Richard DeVries; telephone: 304/876–7656; fax: 304/876–7241; e-mail: *Richard_DeVries@fws.gov.*

SUPPLEMENTARY INFORMATION: We designate the indicated graphic depiction of the National Conservation Training Center's "Entry-Auditorium" building and the words "National Conservation Training Center" as the official logo of NCTC in Shepherdstown, West Virginia.

We establish this logo for use on any training course materials, hospitality products, artwork, or other promotional materials related to the training curriculum, operations, and mission of the National Conservation Training Center. The logo is for the express use of NCTC's management and staff for uses including course notebooks, guest room writing tablets and envelopes, beverage containers, on-campus signs and banners, and studio-set artwork for distance-learning television broadcasts. No one outside of the FWS may use the logo "without" the approval of the Director of the FWS. Any unauthorized use of the logo will constitute a violation 18 U.S.C. 701 and subject the violator to possible fines and imprisonment. Examples of approved uses by outside groups could include, but are not limited to, stationery, calendars and postcards, clothing, and coffee mugs.

The NCTC logo will be used as standalone artwork and will not be used with the official Department of the Interior seal, the Fish and Wildlife Service seal, or any other Federal department or agency logos.

The NCTC logo may not be mechanically or electronically altered, cut apart, separated, or otherwise distorted in perspective or appearance, including the removal or redesign of the words "National Conservation Training Center." No text will be shown in conjunction with this logo except for the approved words "National Conservation Training Center."

The NCTC logo will always be presented as a single solid color, without gradients or other variant graphical treatments, with noticeable contrast to the background on which it is presented. The preferred color for the NCTC logo is "NCTC Green" (PMS 5555 or C56/M35/Y46/K5 or R119/G140/B133). Secondary preferred colors are "NCTC Red" (PMS 7428 or C0/M80/Y45/K55 or R132/G43/B55) or 100 percent Black.

The NCTC logo will not be reproduced smaller than 1 inch wide or with a font size smaller than 4.5 points.

The Graphic Design and Publishing Branch of the National Conservation Training Center is solely responsible for the management and use of the NCTC logo, and for guaranteeing adherence to requirements governing the use of this logo, including communicating logo

specifications to contract printers and vendors that have been authorized to produce materials or products carrying the NCTC logo.

The new NCTC logo is reproduced below.

Dated: April 2, 2010.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–9732 Filed 4–26–10; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2010-N086]
[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before May 27, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358-2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358-2104 (telephone); (703) 358-2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

Endangered Species

Applicant: Los Angeles Zoo & Botanical Garden, Los Angeles, CA; PRT-06373A

The applicant requests a permit to export one male captive-born yellow-footed rock wallaby (*Petrogale xanthopus*) to the Museum de Besancon, Besancon, France for the purpose of enhancement of the survival or the species in cooperation with the Government of Australia.

Applicant: Bryce Carlson/Emory University, Atlanta, GA; PRT-00568A

The applicant requests a permit to import biological samples from common chimpanzee (*Pan troglodytes*) and Tana river red colobus (*Piliocolobus rufomitratus*) from Makerere University Biological Field Station, Fort Portal, Uganda, for the purpose of enhancement of the species through scientific research. This notification covers activities to be conducted by the applicant over a 1–year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Frank Verlin Callahan, Bastrop, TX; PRT-03117A

Applicant: Luis Federico Carlos Mendoza, Mayaguez, PR; PRT-09009A

Applicant: Rodney Peterson, Parkers Prairie, MN; PRT-09558A

Applicant: Robert Lange, Glenwood, MN; PRT-09584A

Dated: April 16, 2010

Brenda Tapia

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. 2010–9659 Filed 4–26– 10; 8:45 am]
BILLING CODE 4310–55–S

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1513]

Draft NIJ Duty Holster Retention Standard for Law Enforcement

AGENCY: National Institute of Justice, Department of Justice.

ACTION: Notice of Draft NIJ Duty Holster Retention Standard for Law Enforcement and Certification Program Requirements.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice will make available to the general public two draft documents: (1) A draft standard entitled, "NIJ Duty Holster Retention Standard for Law Enforcement" and (2) a draft companion document entitled, "NIJ Duty Holster Retention Certification Program Requirements." The opportunity to provide comments on these two documents is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific

communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

DATES: Comments must be received on or before June 11, 2010.

FOR FURTHER INFORMATION CONTACT: Vanessa Castellanos, by telephone at 202–514–5272 [**Note:** this is not a toll-free telephone number], or by e-mail at *vanessa.castellanos@usdoj.gov.*

Kristina Rose,

Acting Director, National Institute of Justice.

[FR Doc. 2010–9633 Filed 4–26–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1516]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces the Spring meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ), to be held in Washington, DC May 11–May 12, 2010.

Dates and Locations: The meeting times and locations are as follows: Tuesday, May 11, 2010 8:30 a.m. to 5:30 p.m. and Wednesday, May 12, 2010 8:30 a.m. to 12:00 p.m. The meeting will take place in the 3rd floor main conference room of the Office of Justice Programs, 810 Seventh Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov,* or 202–307–9963. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of one representative from each state and territory. FACJJ duties include: reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information may be found at *http://www.facjj.org.*

Meeting Agenda

Tuesday, May 11, 2010

8:30 to 9:15 a.m—Welcome and Opening.
9:15–11:30 a.m.—Discussion of Juvenile Justice Issues with Coordinating Council Issue Team Members.
11:30–11:45 a.m—Overview of the 2010 Annual Report Drafts and Instructions for Review.
11:45 a.m.–1:15 p.m.—Working Lunch: FACJJ Subcommittee Meetings (closed).
1:15 pm–2:45 p.m.—Review and Discussion of Drafts—Small Groups.
2:45–3 p.m.—Break.
3–4 p.m.—Work on Annual Report—Small Groups.
4–5:15 p.m.—Group Report Outs and Next Steps.
5:15–5:30 p.m.—FACJJ Subcommittee Report Outs.

Wednesday, May 12, 2010

8–8:40 a.m—Welcome, Opening.
8:40–10 a.m.—Continuation of Work on Annual Reports.
10–10:15 a.m.—Break.
10:15–11:45 p.m.—Further Discussion of Annual Reports, Approval of the 2010 Annual Reports and Other Business.
11:45–Noon—Summary and Adjournment.

For security purposes, members of the FACJJ and of the public who wish to attend, must pre-register online at *http://www.facjj.org* by Friday, May 7, 2010. Should problems arise with web registration, call Daryel Dunston at 240–221–4343. [**Note:** these are not toll-free telephone numbers.] Photo identification will be required. Additional identification documents may be required. Space is limited.

Written Comments

Interested parties may submit written comments by Friday, May 7, 2010, to Robin Delany-Shabazz, Designated Federal Official for the Federal Advisory Committee on Juvenile Justice, OJJDP, at *Robin.Delany-Shabazz@usdoj.gov.* Alternatively, fax your comments to 202–307–2819 and call Joyce Mosso Stokes at 202–305–4445 to ensure its receipt. [**Note:** These are not toll-free numbers.] No oral presentations will be permitted. Written questions and comments from attendees may be invited.

Jeff Slowikowski,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2010–9697 Filed 4–26–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 22, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Final Rule on Statutory Exemption for Cross-Trading of Securities.

OMB Control Number: 1210–0130.

Affected Public: Private sector.

Estimated Number of Respondents: 274.

Total Estimated Annual Burden Hours: 2,859.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $12,309.

Description: The Regulation on Statutory Exemption for Cross-Trading of Securities (29 CFR 2550.408b–19) implements the content requirements for the written cross-trading policies and procedures required under section 408(b)(19)(H) of the Employee Retirement Income Security Act of 1974 (ERISA), as added by section 611(g) of the Pension Protection Act of 2006, Public Law 109–280 (PPA). Section 611(g)(1) of the PPA created a statutory exemption, added to section 408(b) of ERISA as subsection 408(b)(19), that exempts from the prohibitions of sections 406(a)(1)(A) and 406(b)(2) of ERISA those cross-trading transactions involving the purchase and sale of a security between an account holding assets of a pension plan and any other account managed by the same investment manager, provided that certain conditions are satisfied.

The information collection provisions of the Department's final cross-trading policies and procedure regulation (29 CFR 2550.408b–19) carry out the Congressional directive to specify the contents of the policies and procedures required under the statutory exemption. The Department believes the collections are necessary to safeguard plan assets by requiring that investment managers relying on the statutory exemption effect cross-trades in accordance with policies and procedures that are fair and equitable to all accounts participating in the cross-trading program. The information collection provisions of the regulation, along with other requirements of the statutory exemption, are also intended to ensure that plan fiduciaries have adequate information to make an informed decision regarding the plan's initial and continued participation in the investment manager's cross-trading program.

For additional information, see related notice published in the **Federal Register** on December 31, 2009 (Vol. 74, page 69365).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–9721 Filed 4–26–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 33105(c) of Title 49, United States Code, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR, Section 501.2 (a)(9)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 106.6 percent from its 1984 annual average of 311.1 to its 2009 annual average of 642.658.

Signed at Washington, DC, on April 19, 2010.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2010–9735 Filed 4–26–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 441a(c)(2)(B)(ii)), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 335.1 percent from its 1974 annual average of 147.7 to its 2009 annual average of 642.658 and that it increased 21.2 percent from its 2001 annual average of 530.4 to its 2009 annual average of 642.658. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 335.1 percent from its 1974 annual average of 100 to its 2009 annual average of 435.110. Using 2001 as a base (2001=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 21.2 percent from its 2001 annual average of 100 to its 2009 annual average of 121.165. Using 2006 as a base (2006=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 6.4 percent from its 2006 annual average of 100 to its 2009 annual average of 106.418.

Signed at Washington, DC, on April 19, 2010.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2010–9740 Filed 4–26–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Urban Non-Urban Homeless Female Veterans and Homeless Veterans With Families' Reintegration Into Employment

AGENCY: Veterans' Employment and Training Service, Department of Labor.

Announcement Type: New Notice of Availability of Funds and Solicitation for Grant Applications. The full announcement is posted on *www.grants.gov*.

Funding Opportunity Number: SGA 10–03

Key Dates: The closing date for receipt of applications is May 27, 2010 via *http://www.grants.gov.*

Funding Opportunity Description:

The U.S. Department of Labor (USDOL), Veterans' Employment and Training Service (VETS) announces a grant competition for organizations that will provide comprehensive services "through a client-centered case management approach" that addresses complex problems facing Homeless Female Veterans and/or Veterans with Families eligible to transition into gainful employment. Section 2021 of Title 38 of the United States Code (U.S.C.) requires the Secretary of Labor (the Secretary) to conduct, directly or through grant or contract, such programs as the Secretary determines

appropriate to provide job training, counseling, and placement services (including job readiness, literacy training, and skills training) to expedite the reintegration of homeless Veterans into the labor force. Veterans who received a "dishonorable" discharge are ineligible for HVRP services. Priority of service for Veterans in all Department of Labor funded training programs is established in 38 U.S.C. 4215.

HVRP grants are intended to address two objectives: (1) to provide services to assist in reintegrating homeless veterans into meaningful employment within the labor force, and (2) to stimulate the development of effective service delivery systems that will address the complex problems facing homeless Veterans.

The full Solicitation for Grant Application is posted on *http://www.grants.gov* under U.S. Department of Labor/VETS. Applications submitted through *http://www.grants.gov* or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number). If you have issues regarding access to the *http://www.grants.gov* Web site, you may telephone the Contact Center Phone at 1–800–518–4726.

Signed at Washington, DC, this 22nd day of April 2010.

Cassandra R. Mitchell,

Grant Officer.

[FR Doc. 2010–9733 Filed 4–26–10; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Aercrete, LLC/Florence, Colorado.

Principal Product/Purpose: The loan, guarantee, or grant application is to allow a new business venture to renovate and re-fit an existing manufacturing facility to produce autoclaved aerated concrete (AAC) "green" building materials. The NAICS industry code for this enterprise is: 327331 Concrete Block and Brick Manufacturing.

DATES: All interested parties may submit comments in writing no later than May 11, 2010. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 22nd day of April 2010.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2010–9724 Filed 4–26–10; 8:45 am]

BILLING CODE 4510–FN–P

MERIT SYSTEMS PROTECTION BOARD

Publication of Open Government Directive

AGENCY: U.S. Merit Systems Protection Board.

ACTION: NOTICE: Solicitation of public comment.

SUMMARY: On April 7, 2010, the U.S. Merit Systems Protection Board (MSPB or Board) published MSPB's Open Government Plan pursuant to direction set forth in President Obama's January 21, 2009, Memorandum on Transparency and Open Government, and the Office of Management and Budget's (OMB) December 8, 2009, Open Government Directive. The MSPB is hereby requesting public comment on MSPB's Open Government Plan.

DATES: Submit comments concerning the MSPB Open Government Plan by May 27, 2010 to ensure prompt consideration by MSPB's Open Government Working Group. Comments received after May 27, 2010 will also be provided to MSPB's Open Government Working Group.

ADDRESSES: Comments may be mailed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419, or e-mailed to *mspb@mspb.gov.*

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: On January 21, 2009, President Obama issued a memorandum titled "Transparency and Open Government" (Presidential Memorandum). The Presidential Memorandum set forth the administration's commitment to creating an unprecedented level of openness in government built upon three principles: (1) Transparency—the government should provide the public with information about its activities; (2) Participation—the government should provide the public with the opportunity to participate in policy-making; and (3) Collaboration—departments and agencies should collaborate with all levels of government, nonprofit entities, businesses, and the public. The Presidential Memorandum is available on the Internet at *http://www.whitehouse.gov/the_press_office/Transparency_and_Open_.* The Presidential Memorandum also ordered the Director of OMB to issue an Open Government Directive (Directive) instructing executive departments and agencies to take specific actions to

implement the principles outlined in the Presidential Memorandum.

On December 8, 2009, OMB issued the Directive. The Directive requires agencies to take four specific actions within set time periods. The four specific actions are: (1) Publication of three high-value data sets; (2) designation of a senior agency official to be accountable for all publicly disseminated Federal spending information; (3) creation of an Open Government Web page; and (4) development and publication of an Open Government Plan. The Directive is available on the Internet at *http://www.whitehouse.gov/open/documents/open-government-directive.* An agency's Open Government Plan, according to the Directive, "is the public roadmap that details how [the] agency will incorporate the principles of the President's January 21, 2009, Memorandum on Transparency and Open Government into the core mission objectives of [the] agency." Open Government Plans are to set forth how each agency plans to improve transparency, public participation, and collaboration. Open Government Plans are also required to describe at least one "flagship initiative" the agency is already implementing or will implement to improve transparency, public participation, or collaboration.

MSPB's Open Government Plan was published on April 7, 2010, and is available on MSPB's open government Web page at *http://www.mspb.gov/open/index.htm.* The MSPB hereby invites comments on MSPB's Open Government Plan, suggestions concerning how MSPB can improve openness in government through greater transparency, participation and collaboration, and suggestions concerning the high value data and other information the public would like MSPB to disclose.

Dated: April 22, 2010.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2010–9706 Filed 4–26–10; 8:45 am]

BILLING CODE 7401–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, April 29, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Rule—Section 701.21(c) of NCUA's Rules and Regulations, Short-term, Small-dollar Loans.
2. Waiver under Part 704 of NCUA's Rules and Regulations.
3. Insurance Fund Report.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Thursday, April 29, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(A)(ii) and 9(B).
2. Personnel. Closed pursuant to Exemption (2).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304

Mary Rupp,

Board Secretary.

[FR Doc. 2010–9806 Filed 4–23–10; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Friday, April 23, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8) and (9)(A)(ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–9808 Filed 4–23–10; 11:15 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of April 26, May 3, 10, 17, 24, 31, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 26, 2010

Thursday, April 29, 2010

9:30 a.m. Briefing on the Fuel Cycle Oversight Process Revisions (Public Meeting). (Contact: Michael Raddatz, 301–492–3108.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 3, 2010—Tentative

Tuesday, May 4, 2010

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting) (Contact: Kristin Davis, 301–415–2673.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

10:30 a.m. Discussion of Management Issues (Closed—Ex. 2).

Week of May 10, 2010—Tentative

Tuesday, May 11, 2010

9:30 a.m. Briefing on Federal and State Materials and Environmental Management Programs (FSME) Programs, Performance, & Future Plans (Public Meeting). (Contact: George Deegan, 301–415–7834.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 17, 2010—Tentative

There are no meetings scheduled for the week of May 17, 2010.

Week of May 24, 2010—Tentative

Thursday, May 27, 2010

9:30 a.m. Briefing on the Results of the Agency Action Review Meeting (AARM) (Public Meeting). (Contact: Nathan Sanfilippo, 301–415–3951.)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of May 31, 2010—Tentative

There are no meetings scheduled for the week of May 31, 2010.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you

need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: April 22, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–9816 Filed 4–23–10; 4:15 pm]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12126 and #12127]

Maine Disaster #ME–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of MAINE dated 04/19/2010.

Incident: Severe Storms and Flooding.

Incident Period: 02/23/2010 through 03/31/2010.

Effective Date: 04/19/2010.

Physical Loan Application Deadline Date: 06/18/2010.

*Economic Injury (*EIDL*) Loan Application Deadline Date:* 01/19/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: York.

Contiguous Counties:

Maine: Cumberland, Oxford.

New Hampshire: Carroll, Rockingham, Strafford.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.250
Homeowners Without Credit Available Elsewhere	2.625
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Non-profit organizations without credit available elsewhere	3.000

The number assigned to this disaster for physical damage is 12126 6 and for economic injury is 12127 0.

The States which received an EIDL Declaration # are Maine, New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

April 19, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–9709 Filed 4–26–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12132 and #12133]

Minnesota Disaster #MN–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of MINNESOTA (FEMA–1900–DR), dated 04/19/2010.

Incident: Flooding.

Incident Period: 03/01/2010 and continuing.

DATES: *Effective Date:* 04/19/2010.

Physical Loan Application Deadline Date: 06/18/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/19/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/19/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Big Stone, Blue Earth, Brown, Carver, Chippewa, Clay, Kittson, Lac Qui Parle, Marshall, Norman, Polk, Redwood, Renville, Scott, Sibley, Traverse, Wilkin, Yellow Medicine, and The Tribal Nation of the Upper Sioux Community.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 121326 and for economic injury is 121336.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–9712 Filed 4–26–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12128 and #12129]

New York Disaster #NY–00087

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 04/19/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 through 03/30/2010.

Effective Date: 04/19/2010.

Physical Loan Application Deadline Date: 06/18/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/19/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Suffolk.

Contiguous Counties:

New York: Nassau.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.250
Homeowners Without Credit Available Elsewhere	2.625
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12128 6 and for economic injury is 12129 0.

The State which received an EIDL Declaration # is New York.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 19, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–9711 Filed 4–26–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VI—Houston District; Advisory Council Meeting; Public Meeting

The Small Business Administration-Region VI—Houston Advisory Council, located in the geographical Area of Houston, Texas will hold a federal public meeting on—Thursday, May 20, 2010, starting at 10:30 a.m. The meeting will be conducted in the Conference Room at the Small Business Administration, 8701 S. Gessner Drive, Suite 1200, Houston, TX 77074. The purpose of the meeting is to discuss the following.

(1) Houston District Office Performance Goals for 2009–2010.

(2) National SBA Initiatives.

(3) Markets Perception And How To Increase SBA Lending.

(4) Secondary Market.

(5) Small Business Week Awards Luncheon.

For further information, write to Alfreda Crawford, Business Development Specialist, at the Small Business Administration, 8701 S. Gessner, Suite 1200, Houston, TX 77074 or call (713) 773–6555.

Dan Jones,

White House Liaison/Committee Management Officer.

[FR Doc. 2010–9713 Filed 4–26–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

ADSOUTH PARTNERS, Inc., American Racing Capital, Inc., Buck-A–Roo$ Holding Corporation, DDS Technologies USA, Inc., and VECTr Systems Inc.; Order of Suspension of Trading

April 23, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ADSOUTH PARTNERS, Inc. (CIK: 1158235) because it has not filed a periodic report for any reporting period since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Racing Capital, Inc. (CIK: 1103086) because it has not filed a periodic report for any reporting period since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Buck-A–Roo$ Holding Corporation (CIK: 1314642) because it has not filed a periodic report for any reporting period since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DDS Technologies USA, Inc. (CIK: 1099217) because it has not filed a periodic report for any reporting period since the period ended September 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of VECTr Systems Inc. (CIK: 1343259) because it has not filed a periodic report for any reporting period since the period ended September 30, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 23, 2010, through 11:59 p.m. EDT on May 6, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9810 Filed 4–23–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Global Medical Products Holdings, Inc., Order of Suspension of Trading

April 23, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Medical Products Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on April 23, 2010, through 11:59 p.m. EDT on May 6, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–9811 Filed 4–23–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61953; File No. SR–NYSEArca–2010–07]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of Proposed Rule Change Relating to Listing of AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF

April 21, 2010.

On February 23, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), 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 list and trade shares ("Shares") of the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF (the "Fund") under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the **Federal Register** on March 10, 2010.[3] No comments were received on the proposal. On April 9, 2010, the Exchange withdrew the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9677 Filed 4–26–10; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61642 (March 3, 2010), 75 FR 11216.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61947; File No. SR–NYSE–2010–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Amend the Bylaws of NYSE Euronext To Adopt a Majority Voting Standard in Uncontested Elections of Directors

April 20, 2010.

On March 5, 2010, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the By-Laws of its parent corporation, NYSE Euronext ("Corporation"). The proposed rule change was published for comment in the **Federal Register** on March 18, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

On behalf of the Corporation, NYSE proposed to make certain amendments to the Corporation's By-Laws to modify its direct election procedures. Under the existing By-Laws, directors are elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Under the Corporation's corporate governance guidelines previously adopted by the Board, however, any director nominee in an uncontested election (being an election in which the number of nominees equals the number of directors to be elected) who receives a greater number of "withheld" votes than "for" votes (including any "against" votes if that option were to be made available on the proxy card) must immediately tender his or her resignation from the Board.

NYSE proposed to amend the Corporation's By-Laws to add an explicit majority voting provision for uncontested director elections that would replace the plurality vote standard for such elections that is currently in the By-Laws. Contested elections would remain subject to the plurality standard.

Under the proposed amendment to the Bylaws, the proxy card would change for an uncontested election, and the stockholders would be given the choice to vote "for," "against" or "abstain" with respect to each director nominee individually. In such an election, each director would be elected by the vote of the majority of the votes cast with respect to such director's election, meaning that the number of votes cast "for" such director's election exceeded the number of votes cast "against" that director's election (with "abstentions" not counted as a vote either "for" or "against" such director's election). If any incumbent director fails to receive a majority of the votes cast, such director would be required to tender his or her resignation to the Nominating and Governance Committee of the Board (or another committee designated by the Board), and such committee would recommend to the Board whether to accept or reject such resignation or whether other action should be taken. The Board would then act on the recommendation of such committee and publicly disclose its decision regarding the tendered resignation and the rationale behind the decision.[4]

Pursuant to the proposed amendment to the By-Laws, if the Board accepts a director's resignation as part of the process described above for uncontested elections, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board may (i) fill the remaining vacancy as provided in Section 3.6 of the By-Laws and Article VI, Section 6 of the Certificate of Incorporation (involving a majority vote of the remaining directors then in office, though less than a quorum, or by the sole remaining director) or (ii) decrease the size of the Board as provided in Section 3.1 of the Bylaws and Article VI, Section 3 of the Certificate of Incorporation (involving adoption of a resolution by two-thirds of the directors then in office).

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[6] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members with the Act. The Commission also finds that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61694 (March 11, 2010), 75 FR 13170.

[4] The proposed amendment to the Bylaws also provides that a director who tenders his or her resignation would not participate in the recommendation by the Nominating and Governance Committee or the Board of Directors action regarding whether to accept the tendered resignation. If each member of the Nominating and Governance Committee fails to receive a majority of the votes cast in the same uncontested election, then the independent directors who received a majority of the votes cast in such election must appoint a committee among themselves to consider the tendered resignation and recommend to the Board whether to accept it. However, if the only directors who received a majority of the votes cast in such election constitute three or fewer directors, all directors may participate in the action regarding whether to accept the tendered resignation.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78(b)(1).

proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to amend the Corporation's By-Laws to adopt a majority vote standard for uncontested elections is consistent with the Act. The Commission believes that the proposed rule change is designed to allow the members of the Corporation's Board of Directors to be elected in a manner that closely reflects the desires of its shareholders, while also providing a process for addressing the circumstance when a director fails to receive a majority of votes in an uncontested election.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2010–18) 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. 2010–9679 Filed 4–26–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission notes that NYSE represented that the proposed change would not affect the voting limitations contained in the Corporation's certificate of incorporation.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61946; File No. SR–CBOE–2010–032]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove a Feature and Revise Outdated Text Regarding Certain Execution Rules

April 20, 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 April 5, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to eliminate a feature and revise outdated text regarding certain of its execution rules. The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.org,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate a feature and revise outdated text regarding certain of its execution rules.

In August 2008,[5] the Exchange received Securities and Exchange Commission ("Commission") approval of a rule change to give certain non-broker-dealer orders (identified as "Voluntary Professional" orders) the priority given broker-dealer orders rather than the priority given to public customer orders. In December 2009,[6] the Exchange received Commission approval of a rule change to give certain other non-broker-dealer orders (identified as "Professional" orders) the priority given broker-dealer orders rather than the priority given to public customer orders. The rules changed the execution priority in various Exchange execution rules as they existed in August 2008 and December 2009, respectively. After reviewing its execution rules, the Exchange has determined to eliminate a feature within its execution rules pertaining to customer-to-customer immediate cross orders related to Voluntary Professionals and Professionals. Specifically, the Exchange is proposing to amend the execution rules as follows:

Rule 6.74A.09 pertains to customer-to-customer immediate cross orders. Under this provision, the Exchange may determine whether the customer-to-customer immediate cross functionality will be available on a class-by-class basis. If the functionality is available, an agency order for the account of a non-broker-dealer customer may be paired with a solicited order for the account of a non-broker-dealer customer and such orders will be crossed without any auction exposure period, provided certain conditions are met. For purposes of this provision, the rule provides that Voluntary Professional and Professional orders may be considered customer agency orders or solicited orders.[7] However, the system does not currently recognize Voluntary Professional and Professional orders as customer orders for purposes of the customer-to-customer immediate cross. Thus, the proposed rule change narrows the definition of customer-to-customer immediate cross orders to only public customer orders that are not Voluntary Professionals or Professionals, which is consistent with the current operation of the system. The rule will continue to provide that customer-to-customer immediate cross orders cannot be executed at the same price as any resting customer orders (*i.e.,* non-broker-dealer orders that are not Voluntary Professional or Professional orders).[8]

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 58327 (August 7, 2008), 73 FR 47988 (August 15, 2008) (SR–CBOE–2008–09).

[6] Securities Exchange Act Release No. 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR–CBOE–2009–078).

[7] *See* cross reference to Rule 6.74A.09 in Rule 1.1(fff) and (ggg).

[8] Under CBOE Rules 6.45A.01 through .02 and 6.45B.01 through .02, members are required to expose trading interest to the market before executing agency orders as principal or before executing agency orders against orders that were solicited from other broker-dealers (*i.e.,* proprietary and solicited crossing transactions). However, the CBOE options rules do not contain any limitations

The Exchange also proposes to delete a provision from Rule 6.74A.09 (which is proposed to be re-numbered to Rule 6.74A.08) regarding customer-to-customer immediate cross orders that was related to a block exemption from the old linkage rules that does not now exist under the distributive linkage plan.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [9] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change corrects an inconsistency by eliminating a feature and revises outdated text regarding certain Exchange execution rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change removes an inconsistency in the Exchange rules, which may eliminate member confusion and provide clarity on the meaning and applicability of the affected rules. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2010–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–032. 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 Number SR–CBOE–2010–032 and should be submitted on or before May 18, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–9678 Filed 4–26–10; 8:45 am]

BILLING CODE 8011–01–P

or exposure requirements regarding the execution of customer orders against other customer orders. Customer-to-customer immediate cross orders was [sic] adopted to provide a way to enter opposing customer orders using a paired order type that protected customer orders on the book. *See* Securities Exchange Act Release No. 57512 (March 17, 2008), 73 FR 15546 (March 24, 2008) (SR–CBOE–2008–19). While only a public customer order that is not a Voluntary Professional or Professional will be permitted to be executed using the customer-to-customer immediate cross order mechanism under the proposed rule change, Rules 6.45A.02 and 6.45B.02 continue to allow the execution of all public customer orders (including Voluntary Professional and Professional orders) without an exposure period. Members may continue to enter two public customer orders (including Voluntary Professional and Professional orders) on the Exchange with the intent to cross them without the use of the customer-to-customer immediate cross order type. *See* cross references to Rules 6.45A.02 and 6.45B.02 in Rule 1.1(fff) and (ggg).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6980]

Culturally Significant Objects Imported for Exhibition Determinations: "Vatican Splendors"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Vatican Splendors," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Missouri History Museum, Saint Louis, Missouri, from on or about May 15, 2010, until on or about September 12, 2010, the Senator John Heinz History Center, Pittsburgh, Pennsylvania, from on or about October 2, 2010, until on or about January 9, 2011, the Museum of Art, Nova Southeastern University, Fort Lauderdale, Florida, from on or about January 29, 2011, until on or about April 24, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 21, 2010.

Judith A. McHale,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 2010–9717 Filed 4–26–10; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES.**

DATES: January 1, 2010, through January 31, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. EXCO Resources (PA), Inc., Pad ID: Roba, ABR–20100101, Scott Township, Lackawanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: January 8, 2010.
2. Ultra Resources, Inc., Pad ID: Ken-Ton 902, ABR–20100102, West Branch Township, Potter County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: January 8, 2010.
3. Fortuna Energy, Inc., Pad ID: Vanblarcom R 004, ABR–20100103, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.
4. Chief Oil & Gas, LLC, Pad ID: Lytle Unit Drilling Pad, ABR–20100104, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 8, 2010.
5. East Resources, Inc., Pad ID: Willard 419–1H, ABR–20100105, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.
6. East Resources, Inc., Pad ID: York 480–5H, ABR–20100106, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.
7. East Resources, Inc., Pad ID: Wood 513, ABR–20100107, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.
8. Fortuna Energy, Inc., Pad ID: Hoover G 017, ABR–20100108, Canton Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.
9. Fortuna Energy, Inc., Pad ID: Foust J 1H, ABR–20100109, Granville Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.
10. Fortuna Energy, Inc., Pad ID: Lutz T1, ABR–20100110, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.
11. Fortuna Energy, Inc., Pad ID: Lutz T2, ABR–20100111, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.
12. Fortuna Energy, Inc., Pad ID: Thomas FT 1, ABR–20100112, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.
13. Fortuna Energy, Inc., Pad ID: Thomas FT 2, ABR–20100113, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.
14. East Resources, Inc., Pad ID: Butler 127, ABR–20100114, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.
15. J–W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C–04 ABR–20100115, Lumber Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: January 8, 2010.
16. J–W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C–05 ABR–20100116, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: January 8, 2010.
17. J–W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C–07H, ABR–20100117, Lumber Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: January 8, 2010.
18. East Resources, Inc., Pad ID: Hackman 143, ABR–20100118, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.
19. East Resources, Inc., Pad ID: Baker 128, ABR–20100119, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

20. East Resources, Inc., Pad ID: Charles Stock 144, ABR–20100120, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

21. East Resources, Inc., Pad ID: Kennedy 137, ABR–20100121, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

22. East Resources, Inc., Pad ID: Stevens 142, ABR–20100122, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

23. East Resources, Inc., Pad ID: Castle 113D, ABR–20100123, Canton Township, Bradford County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

24. East Resources, Inc., Pad ID: Miller 116D, ABR–20100124, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

25. Citrus Energy Corporation, Pad ID: Procter & Gamble Mehoopany Plant 4V, ABR–20100125, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 8, 2010.

26. Citrus Energy Corporation, Pad ID: Procter & Gamble Mehoopany Plant 3V, ABR–20100126, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 8, 2010.

27. Citrus Energy Corporation, Pad ID: Procter & Gamble Mehoopany Plant 5V, ABR–20100127, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 8, 2010.

28. Fortuna Energy, Inc., Pad ID: Castle 01 047, ABR–20100128, Armenia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

29. Fortuna Energy, Inc., Pad ID: TWL Assoc 01 016, ABR–20100129, Armenia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

30. Chesapeake Appalachia, LLC, Pad ID: Lionetti, ABR–20100130, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 8, 2010.

31. Chesapeake Appalachia, LLC, Pad ID: Storms, ABR–20100131, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

32. Chesapeake Appalachia, LLC, Pad ID: Welles 3, ABR–20100132, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

33. Chesapeake Appalachia, LLC, Pad ID: Shirley, ABR–20100133, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

34. Chesapeake Appalachia, LLC, Pad ID: Meas, ABR–20100134, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

35. Chief Oil & Gas, LLC, Pad ID: Walters Unit #1H, ABR–20100135, West Burlington Township, Bradford County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 9, 2010.

36. Chief Oil & Gas, LLC, Pad ID: Elliott Drilling Pad #1H, ABR–20100136, Monroe Township, Bradford County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 9, 2010.

37. Cabot Oil & Gas Corporation, Pad ID: ChudleighW P2, ABR–20100137, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 9, 2010.

38. Cabot Oil & Gas Corporation, Pad ID: LaRueC P3, ABR–20100138, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 9, 2010.

39. East Resources, Inc., Pad ID: Coolidge 464, ABR–20100139, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 9, 2010.

40. East Resources, Inc., Pad ID: Sterling 525, ABR–20100140, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 9, 2010.

41. Chesapeake Appalachia, LLC, Pad ID: Mowry2, ABR–20100141, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2010.

42. Chesapeake Appalachia, LLC, Pad ID: Harper, ABR–20100142, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2010.

43. East Resources, Inc., Pad ID: McClure 527, ABR–20100143, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 10, 2010.

44. Chesapeake Appalachia, LLC, Pad ID: Welles 4, ABR–20100144, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2010.

45. Cabot Oil & Gas Corporation, Pad ID: CarlsonW P1, ABR–20100145, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 10, 2010.

46. Chief Oil & Gas, LLC, Pad ID: Patterson Drilling Pad #1, ABR–20100146, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 10, 2010.

47. Chesapeake Appalachia, LLC, Pad ID: Popivchak, ABR–20100147, Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

48. Chesapeake Appalachia, LLC, Pad ID: Solowiej, ABR–20100148, Wyalusing Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

49. Cabot Oil & Gas Corporation, Pad ID: Baker P1, ABR–20100149, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 11, 2010.

50. Chesapeake Appalachia, LLC, Pad ID: Horst, ABR–20100150, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

51. Chesapeake Appalachia, LLC, Pad ID: Stevens, ABR–20100151, Standing Stone Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

52. Ultra Resources, Inc., Pad ID: Mitchell A 903, ABR–20100152, West Branch Township, Potter County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: January 13, 2010.

53. XTO Energy Incorporated, Pad ID: Marquardt, ABR–20090712.1, Penn Township, Lycoming County, Pa.; Consumptive Use totaling up to 3.000 mgd; Approval Date: January 14, 2010.

54. Range Resources—Appalachia, LLC, Pad ID: Genter 3, ABR–20100153, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 20, 2010.

55. Range Resources—Appalachia, LLC, Pad ID: Laurel Hill 1, ABR–20100154, Jackson Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 20, 2010.

56. Novus Operating, LLC, Pad ID: Sylvester 1H, ABR–20100155, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: January 21, 2010.

57. EOG Resources, Inc., Pad ID: PHC 20V, ABR–20100156, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: January 21, 2010.

58. EOG Resources, Inc., Pad ID: LIDDELL 1H, ABR–20100157, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: January 21, 2010.

59. Novus Operating, LLC, Pad ID: NorthFork 1H, ABR–20100158, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: January 28, 2010.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: April 16, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–9654 Filed 4–26–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 415 (Sub-No. 2X)]

Escanaba & Lake Superior Railroad Company—Abandonment Exemption—in Ontonagon and Houghton Counties, MI

On April 9, 2010, Escanaba & Lake Superior Railroad Company (ELS) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon approximately 42.93 miles of rail line in Ontonagon and Houghton Counties, Mich., extending between milepost 408.02 at Ontonagon and milepost 365.09 at Sidnaw. The line traverses United States Postal Service Zip Codes 49948, 49953, and 49961, and includes the stations of Ontonagon at milepost 408.0, Mass at milepost 388.8, Rockland at milepost 396.1, Rosseau at milepost 383.2, Pori at milepost 381.2 and Frost at milepost 373.1.

The line does contain federally granted rights-of-way. Any documentation in the possession of ELS will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad and The Union Pacific Railroad Company—Abandonment Portion Goshen Branch Between Firth and Ammon, In Bingham and Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued on or before July 28, 2010. ELS has requested that its petition be given expedited consideration.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 12, 2010. Each trail request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 415 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Keith G. O'Brien, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037. Replies to the petition are due on or before May 12, 2010.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its presentation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 20, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–9676 Filed 4–23–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition To Modify an Exemption of a Previously Approved Antitheft Device; Porsche

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of a petition to modify an exemption of a previously approved antitheft device.

SUMMARY: On April 20, 2009, the National Highway Traffic Safety Administration (NHTSA) granted in full Porsche Cars North America's (Porsche) petition for an exemption in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard* for the Porsche Panamera vehicle line beginning with model year (MY 2010). On February 4, 2010, Porsche submitted a petition to modify its previously approved exemption for the Porsche Panamera vehicle line beginning with model year (MY) 2012. NHTSA is granting Porsche's petition to modify the exemption in full because it has determined that the modified device is also likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2012.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: On April 20, 2009, NHTSA published in the **Federal Register** a notice granting in full a petition from Porsche for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR 541) for the Panamera vehicle line beginning with its MY 2010 vehicles. The Porsche Panamera is equipped with a passive antitheft device (see 74 FR 10837) and an audible and visible alarm.

On February 4, 2010, Porsche submitted a petition to modify the previously approved exemption for the Panamera vehicle line. This notice grants in full Porsche's petition to modify the exemption for the Panamera vehicle line. Porsche's submission is a complete petition, as required by 49

CFR 543.9(d), in that it meets the general requirements contained in 49 CFR 543.5 and the specific content requirements of 49 CFR 543.6. Porsche's petition provides a detailed description and diagram of the identity, design, and location of the components of the antitheft device proposed for installation beginning with the 2012 model year.

The MY 2010 passive antitheft device installed on the Porsche Panamera includes a microprocessor-based immobilizer system, electronic ignition switch, transponder key, remote control unit, alarm/central locking control unit, optional keyless entry system and electronic parking brake. Porsche stated that the central locking system works in conjunction with the audible and visible alarm. Locking the doors with the ignition key, the remote control or a door switch (with the keyless entry option) will activate the audible and visible alarm. An ultrasonic sensor in the alarm system will monitor the doors, rear luggage compartment, front deck lid, fuel filler door, and interior movement. The horn will sound and the lights will flash if there is any detection of unauthorized use. Porsche stated that its immobilizer prevents the engine management system and steering system from functioning when the system is engaged. The immobilizer is automatically activated when the key is removed from the ignition switch assembly, or the optional special keyless entry keycard exits the vehicle with the driver. The immobilizer then returns to its normal "off" state, where engine starting, operation, and steering are inhibited. Starting the engine and operation of the vehicle will be allowed only when the correct code is sent to the control unit by using the correct key in the ignition switch, or by having the correct keyless entry keycard within the occupant compartment of the car. The ignition key contains a radio signal transponder which signals the control unit to allow steering and the engine to start. With the keyless entry system, operation of the vehicle is allowed when the ignition key is substituted with the special keycard that contains a radio signal transmitter similar to the transponder in the standard ignition key.

Porsche also stated that the Panamera line is equipped with an electronic steering column lock and an electronically activated parking brake which is integrated into the vehicle's antitheft device. If the control unit does not receive the correct code from the ignition key or keycard, the parking brake will remain activated and the vehicle cannot be towed.

In its 2012 modification, Porsche stated that it proposes to delete the electronic steering column lock equipped on the exempted vehicle line because the steering column lock is considered redundant by the electronic parking brake that is standard equipment on the line. Porsche proposes to delete the electronic steering lock feature beginning with its MY 2012 vehicles. Porsche stated that its 2012 modified antitheft system will now consist of a microprocessor based immobilizer system which prevents functioning of the engine management system, an activated parking brake system, central locking and an alarm system.

Porsche also stated that with its 2012 modification, the normal state of the applicable control unit is to not allow engine starting or release of the activated parking brake. Only by insertion of the correct key into the ignition switch, or by having the special keyless entry keyfob/device with the occupant compartment of the car is the correct signal sent to the applicable control units, allowing the engine to start and activation of the parking brake to be released. Porsche stated that when the key is removed from the ignition, or the ignition switch/control unit is turned to the ignition lock position and the keyfob exits the vehicle with the driver, the device will return to its normal "off" state, preventing the engine from starting and the parking brake from being released.

Porsche stated that it believes that the planned deletion of the electronic steering column lock from its comprehensive device for the Panamera vehicle line will continue to be as effective as parts-marking and should continue to qualify for an exemption from parts-marking. Since the same aspects of performance (*i.e.,* arming of the device and the immobilization feature) are still provided, the agency believes that the same level of protection is being met. The agency agrees that the deletion of the electronic steering column lock feature should have no effect on functionality of the device's ability to deter theft. Since the agency granted Porsche's exemption for its MY 2010 Panamera vehicle line, there has been no available theft rate data published by the agency for the vehicle line.

The agency has evaluated Porsche's MY 2012 petition to modify the exemption for the Panamera vehicle line from the parts-marking requirements of 49 CFR part 541, and has decided to grant it. The agency believes that the proposed device will continue to provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

If Porsche decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 22, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–9704 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 95 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m.

Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds "such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption." The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 95 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 17 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application: Harlan D. Glaser, George Klopf, Luke R. Lafley, Brian K. La Joie, John L. Langill, Gregg A. Lindberg, John R. Phillips, Joseph A. Ragan, Mark C. Reineke, David J. Schie, David M. Sims, Roland D. Spaniol, Kevin Stein, Richard J. Tomerlin, Thomas L. Tveit, Robert Vanprooyen, Ronald C. Wolfe.

The following 10 applicants had no experience operating a CMV: Kerry V. Ashby, Mickel Brisco, Kevin F. Clark, Ronald Cotton, Alvin T. Graham, Timothy Inman, Yuriy N. Krisihtal, Maria A. Santander, Don L. Steele, Moises L. Vidal.

The following 16 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency: Roger D. Alig, Robert Barrozo, Philip M. Casady, Lynn C. Cebular, Kenneth E. Clark, Lucious Green, James Layfield, Dana O. Lundgren, Raymond Meza, Robert L. Moore, Charles Noll, George H. Southland, Herman D. Snoddy, Timothy E. Stevens, Leon Tanksley, George White.

The following 11 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency: Christopher D. Black, Kevin S. Carter, Karen R. Clark, Meregildo De Leon, Louis R. Edwards, Jr., George C. Jensen, Jesus A. Leon, Dan E. Repogle, Robert W. Sikkila, Kenneth J. Stubbs, Dennis Walowsky.

The following 19 applicants did not have sufficient driving experience during the past 3 years under normal highway operating conditions: James H. Bailey, Johnny J. Campbell, Malcolm J. Celestine, Dale G. Darling, Keith E. Fimon, Raleigh K. Franklin, John E. Gannon, Clarence Hall, Charles R. Hoeppner, Emit Holmes, Levi Kallberg, Robert Key, Christopher D. Linden, Patrick W. Merkel, Gene M. Morris, James L. Putnam, Jr., Donald W. Rich, Rickey E. Rumfield, Gary A. Webb.

One applicant, Eldred L. Lieser, had more than 2 commercial motor vehicle violations during the 3-year review period and/or application process. Each applicant is only allowed 2 moving citations.

Two applicants, Bobby Clark and Charles West, had commercial driver's license suspensions during the 3-year review period for moving violations. Applicants do not qualify for an exemption with a suspension during the 3-year period.

One applicant, Sam E. Goode, did not have an Optometrist/Ophthalmologist willing to state that he is able to operate a commercial vehicle safely with his vision deficiency.

The following 5 applicants were denied for miscellaneous/multiple reasons: Michael A. Georgeff, Joseph Revis, Jr., Lawrence C. Smoak, III, David C. Watson, Paula L. Wharton.

One applicant, Pradeep Singh, was disqualified because his vision deficiency was not stable for the entire 3-year review period.

The following 3 applicants never submitted the required documents: Kenneth A. Adams, Jack Bickley, Brian S. Sikes.

The following 8 applicants met the current federal vision standards. Exemptions are not required for these applicants that meet the current regulations for vision: Terry Appleton, Bernard Braddock, Frederick Bundick, David L. Couch, Douglas A. Jackson, Lee Rapaport, Thomas R. Spicer, Ray A. Thombs, Jr.

Finally, one applicant, Commie Futrell, Jr., was issued a medical certificate for 3 months. Applicants with a medical certificate valid for less than 6 months do not meet the exemption program eligibility criteria.

Issued on: April 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–9667 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0011]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 19 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective April 27, 2010. The exemptions expire on April 27, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

Background

On March 2, 2010, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 9480). That notice listed 19 applicants' case histories. The 19 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 19 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 19 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, aphakia, corneal scarring, prosthesis, retinal detachment and retinal scarring. In most cases, their eye conditions were not recently developed. All but 7 of the applicants were either born with their vision impairments or have had them since childhood. The 7 individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 30 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 19 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 37 years. In the past 3 years, one of the drivers had a conviction for a traffic violation and two of the drivers were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 2, 2010 notice (75 FR 9480).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 19 applicants, only one of the applicants had a traffic violation; failure to stay in the proper lane. All the applicants achieved a record of safety while driving with their vision impairments, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 19 applicants listed in the notice of March 2, 2010 (75 FR 9480).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 19 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The one comment received was in favor of granting the Federal vision exemption to Larry D. Buchanan.

Conclusion

Based upon its evaluation of the 19 exemption applications, FMCSA exempts, Dwight A. Bennett, Arthur W. Boatright, Jr., Larry D. Buchanan, Chad L. Burnham, Chadwick S. Chambers, Loren D. Chapman, David A. Christenson, Charles R. Everett, Julian R. Hall, Claude R. Havener, Paul K. Leger, Robert L. Postell, Martin L. Reyes, Gerald L. Rush, Jr., Wayne J. Savage, Gary F. Segur, Alan T. Watterson, David E. Williford and Larry W. Winkler from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on April 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–9671 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–23099]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 6 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on April 1, 2010 (75 FR 9484).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 6 renewal applications, FMCSA renews the Federal vision exemptions for John R. Alger, Gene Bartlett, Jr., Marland L. Brassfield, Billy R. Jeffries, Gary N. Wilson and William B. Wilson.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: April 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–9672 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16564; FMCSA–2007–0071]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on April 1, 2010 (75 FR 9477).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 19 renewal applications, FMCSA renews the Federal vision exemptions for Alberto Blanco, Michael B. Canedy, Larry A. Cossin, Charles W. Cox, Gary W. Ellis, Dennis J. Evers, Hector O. Flores, W. Roger Goold, Lee Guse, Steven W. Halsey, Clifford J. Harris, John C. Henricks, Thomas M. Leadbitter, John L. Lewis, Jonathan P. Lovel, Kent S. Reining, Enrique G. Salinas, Jr., Anthony T. Smith and Richard W. Wylie.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if:

(1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: April 19, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Devlopment.

[FR Doc. 2010–9673 Filed 4–26–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A, and Form 1040EZ, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

DATES: Written comments should be received on or before May 27, 2010 to be assured of consideration.

ADDRESSES: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chief, RAS:R:FSA, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. *mail to:*

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with the Federal tax laws. The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers in meeting their tax return filing compliance obligation. Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return, *e.g.* with software or paid preparer, and the taxpayer's activities, *e.g.* recordkeeping and tax planning.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system. Time expended and out-of-pocket costs incurred are estimated separately. The methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer,

filing methods, and income levels. Indicators of tax law and administrative complexity as reflected in tax forms and instructions are incorporated in the model. The preparation methods reflected in the model are:

- Self-prepared without software.
- Self-prepared with software.
- Used a paid preparer.

The types of taxpayer activities reflected in the model are:

- Recordkeeping.
- Form completion.
- Form submission (electronic and paper).
- Tax planning.
- Use of services (IRS and paid professional).
- Gathering tax materials.

The methodology incorporates results from a new individual taxpayer survey for TY 2007 and conducted in CY 2008 and CY 2009. (Prior survey for TY 1999 and TY 2000 were conducted in CY 2000 and CY 2001). The new survey results capture the significant gains in productivity associated with the usage of tax preparation software and tax preparation services and large shifts in the population away from self preparation by hand towards use of the assisted methods (paid preparers and tax software). Summary level results using this methodology are presented in the table below.

Taxpayer Burden Estimates

Time spent and out-of-pocket costs are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples of out-of-pocket costs include tax return preparation and submission fees, postage, tax preparation software costs, photocopying costs, and phone calls (if not toll-free).

Both time and cost burdens are national averages and do not necessarily reflect a "typical" case. For instance, the average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ is estimated at 17.3 hours, with an average cost of $225 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 have an expected average burden of about 21.4 hours, and taxpayers filing Form 1040A and Form 1040EZ are expected to average about 8 hours. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer, and the geographic area.

The data shown are the best forward-looking estimates available as of November 12, 2009, for income tax returns filed for 2009. The estimates are subject to change as new data become available. The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

Taxpayer Burden Model

The table below shows burden estimates by form type and type of taxpayer. Time burden is further broken out by taxpayer activity. The largest component of time burden for all taxpayers is recordkeeping, as opposed to form completion and submission. In addition, the time burden associated with form completion and submission activities is closely tied to preparation method (self-prepared without software, self-prepared with software, and prepared by paid preparer).

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: The changes in aggregated compliance burden estimates can be explained in terms of three major components: Technical Adjustments, Statutory Changes, and Agency (IRS) Discretions.

Technical Adjustments

The largest adjustments are from the new survey data. The latest burden estimates are based on a new individual taxpayer survey for TY 2007 and conducted in CY 2008 and CY 2009. (Prior survey for TY 1999 and TY 2000 were conducted in CY 2000 and CY 2001). The new survey results capture the significant gains in productivity associated with the usage of tax preparation software and tax preparation services and large shifts in the population away from self preparation by hand towards use of the assisted methods (paid preparers and tax software).

The economic recession in the past year also has a significant impact on burden estimates, reducing the filing volume and resulting in lower time and money burdens.

The inclusion of Form 1040X has a significant positive impact on compliance burden estimates. The impact of including 1040X has actually out-weighted the impact of economic recession in terms of filing volume, but not in terms of burden changes (time and money). The burden associated with 1040X was not previously included in the aggregated burden estimates.

Statutory Changes

The primary drivers for the statutory changes are the American Recovery and Reinvestment Act (ARRA) of 2009 and related legislations.

IRS Discretions Changes

The IRS discretions changes include 1040X redesign, simplifications in filing Form 1099B/Schedule D/Form 1040, creation of Form 4506T–EZ, IRS support of the Free File Alliance, and changes to expand the eligibility of filing Form 3800 by individuals and businesses for general business credits. All these initiatives reduce time and money burdens for the taxpayers.

These changes have resulted in an overall decrease of 86,792,628 total hours in taxpayer burden previously approved by OMB.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 143,400,000.

Total Estimated Time: 2.431 billion hours (2,431,000,000 hours).

Estimated Time per Respondent: 17.3 hours.

Total Estimated Out-of-Pocket Costs: $31.43 billion ($31,543,000,000).

Estimated Out-of-Pocket Cost per Respondent: $225.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Robert Dahl,

Treasury Departmental Clearance Officer.

ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

Primary form filed or type of taxpayer	Percentage of returns	Average time burden (hours)						
		Total time	Record-keeping	Tax plan-ning	Form com-pletion	Form sub-mission	All other	Average cost (dollars)
The average time and costs required to complete and file Form 1040, Form 1040A, Form 1040EZ, their schedules, and accompanying forms will vary depending on individual circumstances. The estimated averages are:								
All taxpayers Primary forms filed	100	17.3	8.0	1.7	4.3	1.0	2.4	$225
1040	70	21.4	10.2	2.1	5.2	1.0	2.9	280
1040A & 1040EZ Type of taxpayer	30	8.0	2.7	0.8	2.3	0.8	1.3	96
Nonbusiness*	69	10.7	4.1	1.1	3.0	0.8	1.7	129
Business*	31	31.9	16.5	3.0	7.1	1.2	4.0	434

* You are considered a "business" filer if you file one or more of the following with Form 1040: Schedule C, C–EZ, E, or F or Form 2106 or 2106–EZ. You are considered a "nonbusiness" filer if you did not file any of those schedules or forms with Form 1040 or if you file Form 1040A or 1040EZ.

APPENDIX

Forms	Title
673	Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
926	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	Application To Use LIFO Inventory Method.
972	Consent of Shareholder To Include Specific Amount in Gross Income.
982	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040	U.S. Individual Income Tax Return.
1040 SCH A	Itemized Deductions.
1040 SCH B	Interest and Ordinary Dividends.
1040 SCH C	Profit or Loss From Business.
1040 SCH C–EZ	Net Profit From Business.
1040 SCH D	Capital Gains and Losses.
1040 SCH D–1	Continuation Sheet for Schedule D.
1040 SCH E	Supplemental Income and Loss.
1040 SCH EIC	Earned Income Credit.
1040 SCH F	Profit or Loss From Farming.
1040 SCH H	Household Employment Taxes.
1040 SCH J	Income Averaging for Farmers and Fishermen.
1040 SCH L	Standard Deduction for Certain Filers.
1040 SCH M	Making Work Pay and Government Retiree Credits.
1040 SCH R	Credit for the Elderly or the Disabled.
1040 SCH SE	Self-Employment Tax.
1040 A	U.S. Individual Income Tax Return.
1040ES (NR)	U.S. Estimated Tax for Nonresident Alien Individuals.
1040 ES/V–OCR	Estimated Tax for Individuals (Optical Character Recognition With Form 1040V).
1040 ES–OCR–V	Payment Voucher.
1040 ES–OTC	Estimated Tax for Individuals.
1040 EZ	Income Tax Return for Single and Joint Filers With No Dependents.
1040 NR	U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ	U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
1040 V	Payment Voucher.
1040 X	Amended U.S. Individual Income Tax Return.
1045	Application for Tentative Refund.
1116	Foreign Tax Credit.
1127	Application for Extension of Time for Payment of Tax
1128	Application To Adopt, Change, or Retain a Tax Year.
1310	Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106	Employee Business Expenses.
2106 EZ	Unreimbursed Employee Business Expenses.
2120	Multiple Support Declaration.
2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.

APPENDIX—Continued

Forms	Title
2210 F	Underpayment of Estimated Tax by Farmers and Fishermen.
2350	Application for Extension of Time To File U.S. Income Tax Return.
2350 SP	Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos.
2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441	Child and Dependent Care Expenses.
2555	Foreign Earned Income.
2555 EZ	Foreign Earned Income Exclusion.
2848	Power of Attorney and Declaration of Representative.
3115	Application for Change in Accounting Method.
3468	Investment Credit.
3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	General Business Credit.
3903	Moving Expenses.
4029	Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070	Employee's Report of Tips to Employer.
4070 A	Employee's Daily Record of Tips.
4136	Credit for Federal Tax Paid on Fuels.
4137	Social Security and Medicare Tax on Unreported Tip Income.
4255	Recapture of Investment Credit.
4361	Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	Depreciation and Amortization.
4563	Exclusion of Income for Bona Fide Residents of American Samoa.
4684	Casualties and Thefts.
4797	Sales of Business Property.
4835	Farm Rental Income and Expenses.
4852	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
4868	Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP	Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
4952	Investment Interest Expense Deduction.
4970	Tax on Accumulation Distribution of Trusts.
4972	Tax on Lump-Sum Distributions.
5074	Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5405	First-Time Homebuyer Credit.
5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5471 SCH J	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5695	Residential Energy Credits.
5713	International Boycott Report.
5713 SCH A	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	Tax Effect of the International Boycott Provisions.
5754	Statement by Person(s) Receiving Gambling Winnings.
5884	Work Opportunity Credit.
6198	At-Risk Limitations.
6251	Alternative Minimum Tax—Individuals.
6252	Installment Sale Income.
6478	Credit for Alcohol Used as Fuel.
6765	Credit for Increasing Research Activities.
6781	Gains and Losses From Section 1256 Contracts and Straddles.
8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8275	Disclosure Statement.
8275 R	Regulation Disclosure Statement.
8283	Noncash Charitable Contributions.
8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379	Injured Spouse Claim and Allocation.
8396	Mortgage Interest Credit.
8453	U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582	Passive Activity Loss Limitations.
8582 CR	Passive Activity Credit Limitations.
8586	Low-Income Housing Credit.
8594	Asset Acquisition Statement.
8606	Nondeductible IRAs.
8609–A	Annual Statement for Low-Income Housing Credit.
8611	Recapture of Low-Income Housing Credit.

APPENDIX—Continued

Forms	Title
8615	Tax for Certain Children Who Have Investment Income of More Than $1,800.
8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621–A	Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company.
8689	Allocation of Individual Income Tax To the Virgin Islands.
8693	Low-Income Housing Credit Disposition Bond.
8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812	Additional Child Tax Credit.
8814	Parents' Election To Report Child's Interest and Dividends.
8815	Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818	Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	Orphan Drug Credit.
8821	Tax Information Authorization.
8822	Change of Address.
8824	Like-Kind Exchanges.
8826	Disabled Access Credit.
8828	Recapture of Federal Mortgage Subsidy.
8829	Expenses for Business Use of Your Home.
8832	Entity Classification Election.
8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8834	Qualified Electric Vehicle Credit.
8835	Renewable Electricity and Refined Coal Production Credit.
8838	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839	Qualified Adoption Expenses.
8840	Closer Connection Exception Statement for Aliens.
8843	Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	Empowerment Zone and Renewal Community Employment Credit.
8845	Indian Employment Credit.
8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	Credit for Contributions to Selected Community Development Corporations.
8853	Archer MSAs and Long-Term Care Insurance Contracts.
8854	Initial and Annual Expatriation Information Statement.
8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859	District of Columbia First-Time Homebuyer Credit.
8860	Qualified Zone Academy Bond Credit.
8861	Welfare-to-Work Credit.
8862	Information to Claim Earned Income Credit After Disallowance.
8863	Education Credits.
8864	Biodiesel Fuels Credit.
8865	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8865 SCH K–1	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	Transfer of Property to a Foreign Partnership.
8865 SCH P	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	Extraterritorial Income Exclusion.
8874	New Markets Credit.
8878	IRS e-file Signature Authorization for Form 4868 or Form 2350.
8878 SP	Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP).
8879	IRS e-file Signature Authorization.
8879 SP	Autorizacion de firma para presentar la Declaracion por medio del IRS e-file.
8880	Credit for Qualified Retirement Savings Contributions.
8881	Credit for Small Employer Pension Plan Startup Costs.
8882	Credit for Employer-Provided Childcare Facilities and Services.
8885	Health Coverage Tax Credit.
8886	Reportable Transaction Disclosure Statement.
8888	Direct Deposit of Refund to More Than One Account.
8889	Health Savings Accounts (HSAs).
8891	U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans
8896	Low Sulfur Diesel Fuel Production Credit.
8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	Qualified Railroad Track Maintenance Credit.
8903	Domestic Production Activities Deduction.
8906	Distills Spirits Credit.
8907	Nonconventional Source Fuel Credit.
8908	Energy Efficient Home Credit.
8910	Alternative Motor Vehicle Credit.
8911	Alternative Fuel Vehicle Refueling Property Credit.
8915	Qualified Hurricane Retirement Plan Distribution and Repayments.
8917	Tuition and Fees Deduction.
8919	Uncollected Social Security and Medicare Tax on Wages.

APPENDIX—Continued

Forms	Title
8923	Mining Rescue Team Training Credit.
8925	Report of Employer-Owned Life Insurance Contracts
8930	Qualified Disaster Recovery Assistance Retirement Plan Distributions and Repayments.
8931	Agricultural Chemicals Security Credit.
8932	Credit for Employer Differential Wage Payments.
8933	Carbon Dioxide Sequestration Credit.
8936	Qualified Plug-In Electric Drive Motor Vehicle Credit.
9465	Installment Agreement Request.
9465 SP	Solicitud para un Plan de Pagos a Plazos.
Notice 2006–52	
Notice 160920–05	Deduction for Energy Efficient Commercial Buildings.
Pub 972 Tables	Child Tax Credit.
REG–149856–03	Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart.
SS–4	Application for Employer Identification Number.
SS–8	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	Forest Activities Schedules.
W–4	Employee's Withholding Allowance Certificate.
W–4 P	Withholding Certificate for Pension or Annuity Payments.
W–4 S	Request for Federal Income Tax Withholding From Sick Pay.
W–4 SP	Certificado de Exencion de la Retencion del Empleado.
W–4 V	Voluntary Withholding Request.
W–5	Earned Income Credit Advance Payment Certificate.
W–5 SP	Certificado del pago por adelantado del Credito por Ingreso del Trabajo.
W–7	Application for IRS Individual Taxpayer Identification Number.
W–7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP	Solicitud de Numero de Identicacion Personal del Contribuyente del Servicio de Impuestos Internos.
Forms Removed from this ICR:	*Reason for removal:*
(1) Form 1040A, Schedule 1.	Obsolete.
(2) Form 1040A, Schedule 2.	Obsolete.
(3) Form 1040A, Schedule 3.	Obsolete.
(4) Form 8901	Obsolete.
Forms Added to this ICR:	*Justification for Addition:*
(1) Form 8923	
(2) Form 8930	Section 702(d) of P.L. 110–343 modifies IRC 1400Q.
(3) Form 8933	Public Law 110–343, Division B, Title II, section 202 added Code section 45Q.
(4) Form 8936	This new credit is pursuant to section 115 of Subtitle B of Title II of Division B of the Emergency Economic Stabilization Act of 2008 (P.L. 110–343) which added new Code section 45Q.
(5) 1040, Schedule L	P.L. 111–5, Div B, sec. 1008
(6) 1040, Schedule M	P.L. 111–5, sections 1001 and 2202 respectively.

[FR Doc. 2010–9657 Filed 4–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Renewal; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: The OCC, Board, FDIC and OTS (collectively, the Banking Agencies or Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed renewal of the interagency Transfer Agent and Amendment Form, as required by the Paperwork Reduction Act of 1995. The Banking Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Comments must be submitted on or before June 28, 2010.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the Agencies. All comments, which should refer to the OMB control number(s), will be shared among the Agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0124, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors

will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to "FR TA–1, 7100–0099," by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number for this information collection in the subject line of the message.
- *FAX:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "Transfer Agent Registration and Amendment Form, 3064–0026" by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*.
- *E-mail: comments@FDIC.gov*. Include "Transfer Agent Registration and Amendment Form, 3064–0026" in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Attn: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/notices.html* including any personal information provided.

OTS: You may submit comments, identified by "1550–0118 (Form TA–1)," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-*mail address: infocollection.comments@ots.treas.gov*. Please include "1550–0118 (Form TA–1)" in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "1550–0118 (Form TA–1)".
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550–0118 (Form TA–1)".

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed information collection discussed in this notice, please contact any of the agency clearance officers whose names appear below.

OCC: Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, 202.898.3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira Mills, OTS Clearance Officer, at *ira.mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Regulations & Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Banking Agencies are proposing to extend for three years, without revision, the uniform interagency Transfer Agent Registration and Amendment Form. The Securities Exchange Act of 1934 (the Act) requires any person acting as a transfer agent to register as such and to amend registration information when it changes.

Report Title: Transfer Agent Registration and Amendment Form.

Form Number: TA–1.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Estimated Time per Response: 1.25 hours: registration, 10 minutes: amendment.

OCC

OMB Number: 1557–0124.

Estimated Number of Respondents: 3 registrations, 10 amendments.

Estimated Total Annual Burden: 5 hours.

Board

OMB Number: 7100–0099.

Estimated Number of Respondents: 5 registrations, 10 amendments.

Estimated Total Annual Burden: 8 hours.

FDIC

OMB Number: 3064–0026.

Estimated Number of Respondents: 2 registrations, 13 amendments.

Estimated Total Annual Burden: 5 hours.

OTS

OMB Number: 1550–0118.

Estimated Number of Respondents: 5 registrations, 10 amendments.

Estimated Total Annual Burden: 8 hours.

General Description of Reports

This information collection is mandatory: Sections 17A(c), 17(a)(3), and 23(a) of the Act, as amended (15 U.S.C. 78q–1(c), 78q(a)(3), and 78w(a)) (Board and FDIC). Sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Act, as amended (15 U.S.C. 781, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p (OCC). Additionally, the Federal Reserve's Regulation H (section 208.31(a)) and Regulation Y (section 225.4(d)), as well as § 341.3 of the FDIC's Rules and Regulations implement the provisions of the Act. The registrations are public filings and are not considered confidential.

Abstract

Section 17A(c) of the Act requires all transfer agents for securities registered under section 12 of the Act to register "by filing with the appropriate regulatory agency

* * * an application for registration in such form and containing such information and documents * * * as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section." In general, an entity performing transfer agent functions for a security is required to register if the security is registered on a national securities exchange and if the issuer has total assets of $10 million or more and a class of equity security held of record by 500 or more persons.

Request for Comment

The Agencies invite comment on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

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

(d) Ways to minimize the burden of information collections 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 shared among the Agencies. Unless otherwise afforded confidential treatment pursuant to Federal law, all comments will become a matter of public record.

Dated: April 5, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, dated: April 20, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 19th day of March 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: March 29, 2010.

Ira L. Mills,

OTS Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–9722 Filed 4–26–10; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

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, 44 U.S.C. 3506(c)(2)(A). Currently, the Community Development Financial Institutions (CDFI) Fund, Department of the Treasury, is soliciting comments concerning the CDFI Fund's conflict of interest reporting requirements for contract readers of applications submitted for funding or tax credit allocation authority under the CDFI Fund's award programs.

DATES: Written comments must be received on or before June 28, 2010 to be assured of consideration.

ADDRESSES: Direct all comments to Jeffrey C. Berg, Legal Counsel, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *conflictofinterestcomments @cdfi.treas.gov* or by facsimile to (202) 622–8244.

FOR FURTHER INFORMATION CONTACT: The CDFI Fund's Conflict of Interest Package for CDFI Fund Application Reviewers may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to Ashanti McCallum, Paralegal Specialist, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–9018. Please note this is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Conflict of Interest Package for CDFI Fund Application Reviewers.

Abstract: Through its programs, the CDFI Fund supports financial institutions around the country that are specifically dedicated to financing and supporting community and economic development activities. This strategy builds strong institutions that make loans and investments and provide financial services in markets (including economically distressed investment areas and targeted populations) whose needs for loans, investments, and financial services have not been fully met by traditional financial institutions, particularly in the areas of promoting homeownership, developing of affordable housing, and stimulating small business development, as well as providing financial services to those who have not previously accessed financial institutions.

Consistent with the Federal Acquisition Regulations provisions on conflicts of interest, the CDFI Fund has applied, and will continue to apply, a conflict of interest policy with respect to its application reviewers. This policy will prohibit reviewers from participating in the evaluation or process of selection of applications where such participation creates a conflict of interest or an appearance of a conflict of interest. The conflict of interest policy and review materials are used by the CDFI Fund to determine whether a conflict of interest or an appearance of a conflict of interest will prevent a reviewer from being assigned particular applications during the evaluation process for the CDFI Fund awards. The policy and review materials are applicable to all reviewers, including CDFI Fund staff and other federal government employees, as well as those reviewers engaged through contract with the CDFI Fund. The completion of the package is mandatory for all reviewers.

Current Action: Reinstatement.

Type of review: Regular review.

Affected Public: Individuals.

Estimated Number of Respondents: 400.

Estimated Annual Time per Respondent: 15 minutes (0.25 hours).

Estimated Total Annual Burden Hours: 100 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 12 U.S.C. 4703(c); 48 CFR subpart 9.5.

Dated: April 21, 2010.

Scott Berman,

Acting, Chief Operating Officer.

[FR Doc. 2010–9658 Filed 4–26–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee April 27, 2010 Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for April 27, 2010.

Date: April 27, 2010.

Time: 8:30 a.m. to 10 a.m.

Location: Sheraton Society Hill Hotel-Downtown Philadelphia, Cook Room, One Dock Street, Philadelphia, Pennsylvania 19106.

Subject: Review and discussion of candidate designs for the reverse of 2011 Native American $1 Coin. Discussion and planning for 2010 Annual Report.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: April 22, 2010.

Andrew Brunhart,

Deputy Director, United States Mint.

[FR Doc. 2010–9699 Filed 4–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Amendment to an Existing System of Records.

SUMMARY: As required by the Privacy Act of 1974 (5 U.S.C. 552(e)(4)), notice is hereby given that the Department of Veterans Affairs (VA) proposes to amend the existing system of records titled "Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58VA21/22/28)." VA is amending the system of records by adding a new system location and a new routine use regarding transfer of educational benefits under the new Post-9/11 GI Bill.

DATES: Comments on this amended system of records must be received no later than May 27, 2010.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shayla V. Mitchell, Management and Program Analyst, Education Service (225C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 telephone (202) 461–1483.

SUPPLEMENTARY INFORMATION: VA proposes to update the system location to include the location of a new facility where active educational assistance records will be housed. VA also proposes to add a routine use that will permit the disclosure of information on transferred educational assistance benefits to the individual from whom eligibility was derived, the transferor, and the individual who received the educational benefits, the transferee.

VA proposes to disclose claim specific information to a transferor since the transferor may terminate, deny, suspend, add, or reduce educational benefits to an eligible dependent at any time during the individual's eligibility period. Since both the transferor and the dependent are coequally responsible for any debt incurred by the dependent, both parties should have access to all information pertaining to such entitlement.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information was collected.

The report of intent to amend and an advance copy of the proposed changes have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 977677), December 12, 2000.

The proposed new routine use numbered 65 will be added to the system of records titled "Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA" (58VA21/22/28), published in the **Federal Register** at 74 FR 29275 (6/19/09).

Notice of Amendment to System Location

SYSTEM LOCATION:

Records are maintained at VA regional offices and centers; the VA Records Management Center in St. Louis, Missouri; the Data Processing Center at Hines, Illinois; the Corporate Franchise Data Center in Austin, Texas; and the Information Technology Center in Philadelphia, Pennsylvania. Active records are generally maintained by the regional office having jurisdiction over the domicile of the claimant. Active educational assistance records are generally maintained at the regional processing office having jurisdiction over the educational institution, training establishment, or other entity where the claimant pursues or intends to pursue training and Terremark Worldwide, Inc., Federal Hosting Facility in Culpepper, Virginia.

* * * * *

Notice of Amendment of System of Records

The system identified as 58VA21/22/28 Compensation, Pension, Education and Vocational Rehabilitation and Employment Records—VA published in the **Federal Register** at 74 FR 29275 (6/19/09) is revised to add new routine use numbered 65.

* * * * *

65. Information in this system (excluding date of birth, social security number, and address) relating to the use of transferred educational assistance benefits may be coequally disclosed to the transferor, *i.e.,* the individual from whom eligibility was derived, and to each transferee, *i.e.,* the individual receiving the transferred benefit. The information disclosed is limited to the two parties in each transferor-transferee relationship, as the transferor may have multiple transferred relationships.

* * * * *

Approved: April 9, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–9755 Filed 4–26–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
April 27, 2010

Part II

Postal Regulatory Commission

39 CFR Parts 3001 and 3005

Obtaining Information From the Postal Service; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001 and 3005

[Docket No. RM2009–12; Order No. 441]

Obtaining Information From the Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule on procedures for obtaining information from the Postal Service. Their adoption is consistent with Commission obligations under a recent change in law.

DATES: Effective April 27, 2010.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 51815 (October 8, 2009).

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I. Introduction

In this order, the Postal Regulatory Commission (Commission) adopts rules governing (1) the issuance of subpoenas requiring officers, employees, agents, or contractors of the United States Postal Service (Covered Persons) to appear and present testimony or to produce documentary or other evidence; (2) the enforcement of Commission subpoenas by district courts of the United States; and (3) the issuance of orders requiring depositions and responses to written interrogatories by any of those same Covered Persons. These rules implement section 602 of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198, December 20, 2006, which amended section 504 of title 39 of the United States Code by adding a new subsection 504(f) authorizing the issuance of subpoenas and the taking of depositions and responses to written interrogatories by certain persons.[1]

Comments were solicited by Order No. 293.[2] After careful consideration of the comments submitted, the Commission is adopting the proposed rules with several minor modifications, clarifications, and corrections.

II. Comments

The Commission received a total of five comments and reply comments on the proposed rules.[3] In its comments, the Postal Service raises essentially five issues. First, it requests that the Commission revise proposed rule 12(c), which authorizes the summary issuance of subpoenas without a prior opportunity to provide information voluntarily.[4] The suggested revision would require the Commission to make a good faith attempt to reach the Postal Service's General Counsel (or other authorized person) prior to invoking rule 12(c). Postal Service Comments at 1–2.

Second, the Postal Service suggests two changes to the procedures set forth in proposed rule 13 that apply to third-party requests for subpoenas. The first change would prohibit a third party from requesting a subpoena to enforce a Commission (as opposed to a third-party) information request. *Id.* at 2–3. The second proposed change would require third-party applicants for subpoenas to include in their application three certifications in addition to the certification that the Postal Service (or other subpoena target) had failed to comply with a Commission order directing the production of information. *Id.* at 3–4.

Third, the Postal Service objects to the requirement in proposed rule 14(a) that places responsibility on the Postal Service for serving a subpoena on a third-party contractor. *Id.* at 4–9.

Fourth, the Postal Service challenges the requirement in proposed rule 15(e) that the failure or refusal to produce electronically stored information on grounds of undue burden or cost must demonstrate that undue burden or cost by clear and convincing evidence. *Id.* at 9–12.

Finally, the Postal Service suggests that the Commission clarify that proposed rule 31 will not apply to Commission proceedings.[5] The purpose of this clarification would be to prevent the use of "rule 31" as a means of circumventing the requirements contained in rule 33 of the Commission's existing rules of practice. *Id.* at 13–14. Alternatively, the Postal Service requests that proposed rule 31 be modified to include the same requirements contained in rule 33 of the rules of practice. *Id.* at 14.

In its initial comments, Valpak states that the proposed regulations appear to conform to the Commission's statutory authorization, but urges a clarification to the subpoena form that was attached to Order No. 293. Valpak Comments at 2–3. Specifically, Valpak urges the Commission to revise the subpoena form by adding a field to identify the name of the report, if any, to which a subpoena applies.[6] *Id.* at 3. The purpose of this change would be to "ensure that the jurisdictional basis for each subpoena would be clarified at the outset." *Id.* In reply comments, Valpak opposes the Postal Service's attempt to preclude third parties from seeking subpoenas to enforce Commission information requests. Valpak Reply Comments at 1–3. Valpak also opposes the Postal Service's attempt to require additional certifications in third-party subpoena requests. *Id.* at 3–4.

APWU objects to the changes proposed by the Postal Service to rule 15 that relate to the showing of undue burden or cost required to justify a failure or refusal to disclose or provide electronically stored information. APWU Comments at 1–2. APWU also opposes the Postal Service's requested clarification regarding the application of proposed rule 31 to Commission proceedings, as well as the Postal Service's proposed alternative to modify proposed rule 31 to conform to rule 33 of the rules of practice. *Id.* at 2–3.

[1] Section 601(a)(3) of the PAEA created section 504 by re-designating then-existing section 3604 of title 39 as section 504.

[2] Notice and Order of Proposed Rulemaking Concerning Obtaining Information From the Postal Service, September 2, 2009 (Order No. 293).

[3] Comments of the Public Representative in Response to Notice and Order Concerning Information from the Postal Service (Public Representative Comments); United States Postal Service Comments in Response to Order No. 293 (Postal Service Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on Proposed Rulemaking Concerning Obtaining Information from the Postal Service (Valpak Comments), all filed on November 9, 2009; Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Proposed Rulemaking Concerning Obtaining Information from the Postal Service, November 23, 2009 (Valpak Reply Comments); and Reply Comments of American Postal Workers Union, AFL-CIO, November 24, 2009 (APWU Reply Comments). On November 25, 2009, APWU filed American Postal Workers' Union, AFL-CIO, Motion for Late Acceptance of Reply Comments. The motion is granted.

[4] The Postal Service has referred to discrete sections of proposed 39 CFR part 3005 as "rules." To avoid confusion, that convention will be followed in this order.

[5] As the Postal Service correctly points out, the correct number of the proposed rule in subpart C of the proposed regulations is "§ 3005.21," not "§ 3005.31" as set forth in the text of the rule. *Id.* at 12, n.21. The Postal Service nevertheless refers to this rule as "rule 31" in its comments. *Id.* at 12–14. APWU also refer to this rule as "rule 31." *See* APWU Comments at 2. For consistency and to avoid confusion, the Commission refers to this rule as "rule 31." The Commission is, however, correcting the erroneous number in the final version of the rules adopted by this order.

[6] The proposed subpoena form attached to Order No. 293 included an analogous field for specifying the Commission proceeding to which a subpoena relates.

The Public Representative states that the proposed rules appear to conform to the statutory requirements of 39 U.S.C. 504, but suggests several modifications and clarifications. Public Representative Comments at 8–9. First, the Public Representative suggests a modification to the provisions of proposed rule 11 that allow for the attachment to a subpoena of conditions deemed " 'necessary and appropriate under the circumstances presented.' " *Id.* at 4–5. Second, the Public Representative suggests that the Commission revise proposed rule 12 to clarify the procedures or standards used to demonstrate that the Postal Service has been given an opportunity to provide information voluntarily (or that the Postal Service has failed to respond) before a subpoena is issued. *Id.* at 5–6.

Third, the Public Representative suggests that the Commission consider changes in the procedures under proposed rule 13 by which the Postal Service would confirm that a Covered Person does not object to a subpoena. The Public Representative also suggests that the Commission consider modifications that ensure a Covered Person's right to state his objections to a subpoena request directly to the Commission, not through the Postal Service. *Id.* at 6–7.

Fourth, the Public Representative suggests that comparisons to the Federal Rules of Civil Procedure or the adoption of analogous provisions may, in limited instances, be of benefit to the Commission and parties to Commission proceedings. *Id.* at 7.

Finally, the Public Representative states its support for the use in an adjudicatory proceeding of proposed rule 31 as an alternative to the procedures in part 3001 of the rules of practice for compelling discovery. *Id.* at 7–8.

III. Summary of Changes to Proposed Rules

As discussed below, the Commission is making the following changes to its proposed rules:

Rule 13 is modified to require Postal Service confirmation that requests for subpoenas have been transmitted to third-party agents or contractors.

Rule 14 is modified to revise the Postal Service's responsibilities for transmitting subpoenas to Covered Persons. As modified, the Postal Service will be responsible for transmitting subpoenas to persons currently holding positions with the Postal Service (such as officers and employees), to persons or entities currently acting as agents for the Postal Service, or to persons serving as a Postal Service contractor under an existing contract. In addition, the proposed rule will be modified to eliminate any Postal Service responsibility for transmitting subpoenas to former officers, employees, agents, and contractors. Instead, the person who requested the subpoena and, in some cases, the Commission, will be responsible for serving subpoenas on former officers, employees, agents, and contractors.

Rule 14(b) is modified to state expressly the Commission's authority to extend the time for filing a return of service of a subpoena.

Rule 15(e) is revised by removing the requirement that a refusal to produce electronically stored information must be justified by "clear and convincing evidence." Rule 15(e) is replaced by additions to rules 12 (governing summarily issued subpoenas) and 13 (governing subpoenas requested by third parties) that require opponents of subpoenas to state "with particularity" the reasons why a subpoena would be unduly burdensome or costly.

The subpoena form is modified by adding a placeholder for "Report Name-If Applicable." The proposed form already has a placeholder for "Case Name-If Applicable."

Finally, the Commission redesignates rule 31 as rule 21 and clarifies the relationship between rule 21 and existing rule 33 of the rules of practice.

In all other respects, the Commission adopts the rules as proposed in Order No. 293.

IV. Discussion

The final rules adopted by this order establish a new part 3005 organized in three subparts. Subpart A integrates part 3005 into the Commission's existing rules and regulations by making various existing rules applicable to part 3005. Subpart B establishes regulations governing the issuance and enforcement of subpoenas under the authority of sections 504(f)(2)(A) and 504(f)(3). Finally, subpart C implements section 504(f)(2)(B) of title 39, which authorizes the Commission to order depositions and responses to written interrogatories. The regulations in both subpart B and subpart C apply to Covered Persons. The term "covered persons" is defined in subsection 504(f)(4) of title 39.

The comments filed in this proceeding address six of the proposed rules and the subpoena form proposed as Appendix A to part 3005. Those six proposed rules are rule 11, rule 12, rule 13, rule 14, rule 15, and rule 31.

Rule 11(d) Conditions placed on subpoenas. The Public Representative proposes a modification to rule 11(d) to clarify that conditions imposed on a subpoena by the Commission are in conformity with statutory and other applicable authorities under which the Commission functions. Public Representative Comments at 4–5. The Public Representative makes this proposal because she finds ambiguity in phraseology of rule 11 as proposed. As proposed, rule 11(d) would permit the attachment of conditions to a subpoena that are "necessary and appropriate under the circumstances presented."

The Commission recognizes that any conditions attached to a subpoena must be authorized by law and consistent with statutory authorities under which the Commission operates. Subpoena conditions must also reflect the specific need for information and the circumstances in which the subpoena is issued. The Commission believes that the requirement in rule 11(d) that subpoena conditions be "necessary and appropriate" implicitly includes an obligation to attach conditions that are in conformance with the legal authorities under which the Commission functions. The change proposed by the Public Representative could be interpreted as a limitation on the Commission's discretion and thereby undermine, rather than foster, the attachment of lawful conditions. The Commission therefore finds the formulation of rule 11(d), as proposed, to be appropriate and rejects the Public Representative's suggested modification.

Rule 12(c) Subpoenas issued summarily by the Commission. The Postal Service requests that rule 12 be modified to require the Commission to make a good faith attempt to reach its General Counsel or other appropriate person before invoking the provisions of rule 12(c) under which a subpoena may be issued summarily without a prior opportunity to provide information voluntarily.

The Commission does not believe that such a change is necessary or desirable. Rule 12 addresses situations in which a subpoena can be issued without the prior receipt of a third-party request. In other words, the Chairman, a designated Commissioner, or an administrative law judge appointed under 5 U.S.C. 3105 could seek authorization from the full Commission for the issuance of a subpoena. Rule 12(b) provides that, with a limited exception provided in rule 12(c), the Postal Service would be given the opportunity to provide the information voluntarily before the subpoena is issued. The exception provided in rule 12(c) is expressly limited to situations in which "a delay in the issuance of the subpoena could unreasonably limit or prevent

production of the information being sought."

Given the limited applicability of rule 12(c), the Commission does not believe the modification proposed by the Postal Service is necessary. In addition to the express limitations that rule 12 places on its own operation, the Commission noted its expectation in the analysis section to Order No. 293 that "the summary issuance of a subpoena [would] rarely, if ever, be necessary...." Order No. 293 at 18.

Moreover, the Commission does not believe that the proposed modification would necessarily be desirable since neither the Commission, nor the Postal Service, can contemplate all of the possible situations in which the summary issuance of a subpoena might be deemed necessary. Notwithstanding its decision to reject the proposed change to rule 12, the Commission will certainly, as a matter of comity, consider informal notification to the Postal Service's General Counsel or other appropriate person prior to the summary issuance of a subpoena if such prior notification appears feasible.

The Public Representative proposes a further and slightly different modification to rule 12 that would apply to situations in which the Postal Service has been given an opportunity to provide information voluntarily. Specifically, the Public Representative suggests that clarification is needed to "provide some standard for evidence of the Postal Service's receipt of an opportunity to respond voluntarily as well as evidence showing that it has failed to respond." Public Representative Comments at 5–6.

The Commission is not persuaded that this clarification is necessary. Any proposal by the Chairman, a designated Commissioner, or an administrative law judge for the issuance of a subpoena must in all cases be affirmatively approved by a majority of the Commissioners. *See* proposed rule 11(b). Except for subpoenas issued under the authority of rule 12(c), the Commissioners must decide that the Postal Service has had an opportunity to provide the information voluntarily. Whether or not such an opportunity has been provided will depend upon the specific facts and circumstances surrounding the attempt to obtain the information. Not all such facts and circumstances are readily predictable. This makes the formulation of an evidentiary standard or evidentiary requirements suggested by the Public Representative problematic and therefore undesirable. If further experience demonstrates the need for, and feasibility of, such clarifications, the Commission will consider the adoption of a specific proposal.

Rule 13 Eligibility to make third-party requests for subpoenas and contents of the request. The Postal Service seeks two changes to rule 13. First, it seeks to eliminate the right of third parties to request subpoenas to enforce a Commission information request. Postal Service Comments at 2–3. In support of this proposed modification, the Postal Service argues that, as proposed, rule 13 "allows participants to prod the Commission as to its own information requests. Whether and how to enforce a Commission information request is a matter between the Commission and the Postal Service." *Id.* In the view of the Postal Service, this "would produce little clear benefit" and would threaten "to embroil participants in the Commission's exercise of discretion...." *Id.* at 3. Valpak opposes the Postal Service's suggestion. Valpak Reply Comments at 1–3.

The Commission does not view the possibility that third parties might seek enforcement of a Commission information request as a threat to the exercise of its discretion. Moreover, if the Commission were to preclude third parties from seeking subpoenas to enforce a Commission information request, this could prompt third-party attempts to preserve their right to request subpoenas by making duplicative requests for information that merely track outstanding Commission information requests. Finally, if the concerns articulated by the Postal Service materialize, the Commission can always amend its rules to restrict the right of third parties to seek enforcement of Commission information requests.

As an alternative to its first proposed change, the Postal Service proposes an amendment to rules 13(c)(4) and 13(c)(5) that would require third-party applicants for subpoenas to provide more than a certification that the Postal Service has failed to comply with a Commission order. Postal Service Comments at 3–4. Specifically, the Postal Service requests that persons requesting subpoenas be required to include in their requests a description of the efforts of the Postal Service (or other subpoena target) to respond; to await passage of a specified period of time following issuance of an order or reply deadline before requesting a subpoena; and to provide the subpoena target's response to an inquiry from the applicant as to whether a response would be forthcoming. *Id.* at 3–4. Once again, Valpak opposes the Postal Service's suggestion. Valpak Reply Comments at 3–4.

The Commission is not persuaded that this second change should be made. The person in the best position to describe the efforts of the subpoena target to respond to a discovery order or information request is the subpoena target, not the person requesting the subpoena. Moreover, if additional time is needed to respond to a discovery order or information request, the target of the subpoena is free to request additional time.

Finally, the obligation to state that a response will be forthcoming after a response deadline is an obligation of the responding party whether or not the requesting party inquires as to the status of the response effort. In those situations in which a formal response deadline has not been established or in which efforts to respond are not "visible externally,"[7] any person who requests a subpoena without first checking the status of the response effort will do so at his own peril, since subpoenas cannot be issued automatically upon request. They require formal approval by the Commission. If the Postal Service (or other responding party) is still engaged in a good faith process of responding, that fact will undoubtedly be communicated to the Commission in the responder's answer to the subpoena request pursuant to rule 13(a)(3), and the requesting party risks that its request will be summarily denied.

Rule 13 Responses to third-party requests for subpoenas. Proposed rule 13 governs requests by third parties for the issuance of subpoenas. Rule 13(a) covers situations in which hearings have been ordered. Rule 13(b) governs situations in which hearings have not been ordered. As proposed, both rule 13(a) and 13(b) make the Postal Service responsible for notifying the Covered Person of the request and for transmitting any objections it might have.

The Public Representative makes two suggestions. First, she suggests that the Postal Service be required to provide proof that it has notified the Covered Person of the subpoena request. Second, the Public Representative suggests that some Covered Persons, such as Postal Service contractors, should be given the opportunity to respond directly to the subpoena request. Public Representative Comments at 6. The Commission agrees with both suggestions.

With regard to the first suggestion, the Commission concludes that it would be useful to require the Postal Service to identify the persons to whom it has given notification of the subpoena request. While the Commission has no

[7] *See* Postal Service Comments at 3, n.3.

doubt that the Postal Service will provide such third-party notifications, it would be useful for the Commission, the requesting party, and other interested persons to have information regarding the recipients of such notifications. While the requesting party may be aware of at least one Covered Person who possesses or controls relevant information, identification of additional persons who the Postal Service knows or believes possess or control the information being requested will foster the efficient operation of the proposed regulations. To ensure that such additional sources are identified, the Commission is revising rule 13(a)(2) to require the Postal Service to identify such sources and provide relevant contact information. Similar changes are being made to rule 13(b)(1).

With regard to the Public Representative's second suggestion regarding the right of Covered Persons to respond to a subpoena request, the Commission never intended to preclude a Covered Person from submitting its own answer without the assistance of the Postal Service. To eliminate any misunderstanding and to reduce administrative burdens on the Postal Service, the Commission is modifying and clarifying rule 13(a)(3) and rule 13(b)(2) in two ways. First, the Commission is eliminating any Postal Service responsibility for transmitting a Covered Person's objections to the request for subpoena. Second, both proposed subsections of rule 13 are revised to include Covered Persons among those who are eligible to answer a request for subpoena. Together, these two changes will make it clear that Covered Persons are permitted to submit their own answers to subpoena requests. In making these changes, the Commission recognizes that the Postal Service remains an interested party and therefore will be eligible to file its own answer to a request for a subpoena directed to a third party.

Rule 14 Service of subpoenas on third-party contractors. The Postal Service objects to the proposed requirement in rule 14(a) that it transmit and deliver Commission subpoenas to contractors or agents outside the Postal Service.[8] *Id.* at 4–9. It argues that the proposed procedure appears to be unnecessary, is without precedent, and raises potentially serious constitutional issues. *Id.* The Postal Service also explains that because of the complexities involved in serving foreign entities, it may not be possible to file a return of service within 2 days of a subpoena's issuance. *Id.* at 8.

Section 504(f)(2)(A) grants the authority "to issue subpoenas requiring the attendance and presentation of testimony by, or the production of documentary or other evidence in the possession of, *any covered person*...." [emphasis added]. A "covered person" is "an officer, employee, agent, or contractor of the Postal Service." Section 504(f)(4).

As formulated, section 504(f) does not authorize the issuance of subpoenas to the Postal Service itself, but to officers, employees, agents, and contractors of the Postal Service. Information sought from a Covered Person must be related to a proceeding or request related to the Postal Service.[9] Given the Postal Service's obvious interest in attempts to subpoena information from its officers, employees, agents, and contractors, the Commission has provided in rule 14 that subpoenas be served upon the Postal Service and its General Counsel and other representatives authorized to receive legal process regardless of which officer, employee, agent, or contractor is the ultimate target of the subpoena.[10]

The Postal Service objects to its obligation to transmit a subpoena on five grounds. First, the Postal Service argues that the Commission is equally capable of knowing which of the Covered Persons is likely to have possession of the information being sought. Second, it argues that it "cannot be accountable for independent third parties' behavior or responsiveness with respect to their own proprietary information." Postal Service Comments at 5. Third, it argues that service on an entity through an independent third party (in this case, the Postal Service) can implicate an entity's due process rights. *Id.* at 6. Fourth, the Postal Service asserts that it is unaware of any Federal or administrative procedures that permit substituted service of subpoenas. *Id.* Finally, it argues that Congress has not indicated its intent to have the Postal Service play a role in the service of Commission subpoenas. *Id.* 6–7.

Contrary to the Postal Service's first contention, the Commission may not necessarily be able to ascertain the identity of Covered Persons in possession of relevant information at the time a subpoena is issued. For example, when the Postal Service is provided an opportunity under rule 12 to produce information voluntarily, a subpoena could be issued without the identity of the appropriate Covered Person or Covered Persons being known to the Commission.[11] The Commission's inability to identify appropriate Covered Persons could also occur because of a Postal Service refusal voluntarily to provide both the requested information and the identities of the Covered Persons in possession of the information. Rule 14 would address such a situation by requiring the Postal Service to transmit the subpoena to each Covered Person needed to obtain the information. Without rule 14's provisions for transmitting subpoenas to the relevant Covered Persons, the Commission might first have to issue one or more subpoenas just to ascertain the identity of the relevant Covered Persons.[12]

The Postal Service's second argument is that it should not be held accountable for the response of a third party, such as a Postal Service agent or contractor, to a Commission subpoena that might seek information that is arguably proprietary. This concern is misplaced. The proposed rules already make clear that compliance with a subpoena is the responsibility of the Covered Person. *See* rule 15. In that connection, the Commission would point out that claims for confidential treatment can be made by any Covered Person. *See* proposed rule 15(f). Accordingly, it is unnecessary for the Commission to address the Postal Service's request that the Commission provide in its rules that the Postal Service has no liability for responses to a subpoena by an entity having only a contractual relationship with the Postal Service. *See* Postal Service Comments at 9.

[8] The Postal Service also seems to interpret the proposed rules as imposing an obligation on the Postal Service regarding the Covered Person's "responsiveness" to the subpoena. Postal Service Comments at 5. However, the proposed rules already make clear that compliance with a subpoena is the responsibility of the Covered Person. *See* proposed rule 15. Accordingly, the Commission need not address the Postal Service's request that the Commission provide in its rules that the Postal Service has no liability for responses to a subpoena by an entity having only a contractual relationship with the Postal Service. *See id.* at 9.

[9] Section 504(f)(2) authorizes the issuance of subpoenas "with respect to any proceeding conducted by the Commission under this title [*i.e.*, title 39] or to obtain information to be used to prepare a report under this title [*i.e.*, title 39]...."

[10] For that same reason, the Commission has authorized the Postal Service to address subpoenas and subpoena requests regardless of which Covered Person is the target of the subpoena. *See* rules 12 and 13.

[11] Such a situation could also arise in cases under rule 12(c) in which it is not possible to provide the Postal Service with an opportunity to produce information voluntarily before resorting to the issuance of a subpoena.

[12] The problem of identifying Covered Persons would not be presented in Federal district courts. Fed. R. Civ. P. rule 26(a) requires, *inter alia,* that parties must, without awaiting a discovery request, provide the names, addresses, and phone numbers of individuals likely to have discoverable information. The Commission's current rules of practice contain no such requirement.

As its third argument, the Postal Service asserts that transmission of a subpoena by the Postal Service to a Covered Person could violate the Covered Person's due process rights.[13] *Id.* at 6. The Commission is not persuaded by this argument. In the first place, the cases cited by the Postal Service all involve some type of substituted, alternative, or constructive service which either did not, or might not, result in notice actually being given to the intended recipient of process.[14] Without notice of process, the intended recipient of process would be denied the opportunity to be heard, which, as the Postal Service recognizes, is " 'the essential element of due process of law....' " Postal Service Comments at 6 citing *Jacob*, 223 U.S. at 265–66. By contrast, under the provisions of rule 14, the Postal Service would actually transmit the Commission subpoena to the Covered Person and the Covered Person would be able to respond directly to the Commission.

Historically, judicial subpoenas required personal service by an officer of the court, such as a marshal or deputy marshal.[15] Over time, these service requirements have been relaxed by a number of courts. *Id.* at 399–400. In the view of these courts, it is the delivery of the subpoena and actual notice of what is being demanded of the person being subpoenaed that is the touchstone of due process and the obligation to respond. From the standpoint of due process, there appears to be nothing unusual about personal service by an officer of the court.[16]

The fourth ground for opposing rule 14's service mechanism is that the Commission has failed to identify any other Federal or administrative precedent that supports substituted service of a subpoena. The short answer to this contention is, as noted above, that the Commission's proposed mechanism for service does not constitute substituted service. Whereas substituted service typically involves delivery to a person's place of work when the person is not present, delivery to an address by certified or registered mail, or posting of a notice in a public place, and publication in a newspaper,[17] the Commission's proposed rule 14 provides for transmission of a subpoena by the Postal Service to the particular person responsible for responding. This is actual service, not substituted service. Adoption of the proposed mechanism in rule 14 does not depend upon a justification for substituted service.

Finally, the Postal Service argues that Congress has not expressed an intent that the Postal Service play a role in the service of Commission subpoenas. The Commission agrees. But neither does section 504(f) prohibit the Commission's proposed method of service. In light of the more recent judicial developments identified above and in further view of the absence of specific congressional direction regarding the manner in which Commission subpoenas must be served, the Commission continues to believe that its proposed method for serving subpoenas on outside Postal Service contractors and agents implements section 504(b) reasonably and effectively. This is particularly true when the Postal Service has an agency or contractual relationship with the Covered Person at the time the subpoena is issued. In such cases, the requirement that the Postal Service transmit the subpoena to its agent or contractor is similar to transmission by the Postal Service of a subpoena to one of its own officers or employees. Because of its existing relationships with agents and contractors, the Postal Service is in the best position to accomplish transmission of the subpoena to an agent or contractor.

Without the requirement that the Postal Service transmit the subpoena to its agent or contractor, more formal and potentially time consuming methods would be required.[18] If, for some unexpected reason, the Postal Service is unable to locate or transmit the subpoena to the appropriate recipient, it can so advise the Commission and an alternate and more traditional means of service can be employed.

By contrast, if, at the time a subpoena is issued, the Postal Service no longer has an agency or contractual relationship with the third-party agent or contractor, it may no longer be in any better position to transmit the subpoena than the third party who requested the subpoena or the Commission itself. Accordingly, the Commission is revising proposed rule 14 to eliminate the requirement that the Postal Service transmit a subpoena to a former agent or contractor. Service on such Covered Persons will be the responsibility of either the third party who requested the subpoena or the Commission.

While the service requirements for outside Covered Persons, such as former Postal Service agents or contractors, will be modified, the Commission expects the Postal Service to provide subpoenaed information to which the Postal Service has contractual or other proprietary rights whether or not such information is in the physical possession of the Postal Service at the time a subpoena is issued. It is the Commission's understanding that the Postal Service does not oppose that position. *See* Postal Service Comments at 7, n.13. Similarly, the Commission expects the Postal Service to provide all relevant subpoenaed information that is under its physical control at the time a subpoena is issued, even if that information is information of an outside Covered Person, such as a Postal Service contractor.[19]

Rule 15(e) Standard for opposing production of electronically stored information. The Postal Service expresses concern that the formulation of proposed rule 15(e) establishes a "high bar to cost-based objections...[that] would lead to severe imbalances between the probative value of requested information and the cost inflicted on the Postal Service." *Id.* at 9. As an alternative, the Postal Service requests the Commission to adopt a standard akin to Fed R. Civ. P. rule 26(b)(2)(C). *Id.* at 12. Fed. R. Civ. P. rule 26 provides general provisions for discovery in Federal district courts and is expressly referred to in Fed. R. Civ. P. rule 45(d), the rule that sets forth duties in responding to judicial

[13] The Postal Service's argument addresses situations in which the Covered Person to whom the subpoena is directed is a Postal Service agent or contractor. The Postal Service makes no due process objection to the Commission's proposal that subpoenas be transmitted by the Postal Service to its officers and employees. It therefore appears that the Postal Service sees no due process problem with transmission of a subpoena by the Postal Service to one of its officers or employees. The basis for this distinction is not provided.

[14] *E.g., Jacob v. Roberts* 223 U.S. 261 (1912) (service by publication); *Mulhane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (service by publication); and *Calabro v. Leiner*, 464 F.Supp.2d 470 (E.D. Pa. 2006) (alternative service). It should be noted that some of the very cases cited by the Postal Service upheld the constitutionality of substituted or alternative service. *See Jacob*, 223 U.S. at 267; and *Mulhane*, 339 U.S. at 318.

[15] 9A *Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure*, § 2454 at 397 (Civil 3d. 2002 and Supp. 2008) (*Wright and Miller*).

[16] Indeed, at least one Federal court has noted that even under Fed. R. Civ. P. rule 45, there is no specific requirement for personal service of a subpoena. All that the rule requires is "delivery" to the person being served. *Ultradent Prods., Inc. v. Hayman*, D.C.N.Y. 2002, 2002 WL 31119425, *3 (Patterson, J.). as cited in *Wright and Miller*, § 2454, n.10.

[17] *See* 62B Am. Jur.2d Process § 143.

[18] In some cases, this could require the Commission to involve the assistance of a United States Attorney or the Justice Department in serving the subpoena. There appears to be no need for such additional complexity given that the agency or contractor relationship will be an existing relationship and the fact that the agent or contractor will be able to assert any objections or claims of privilege or confidentiality directly to the Commission. *See* rules 12 and 13.

[19] The third-party contractor would, of course, have the opportunity to oppose production of such information, either by opposing a third-party request for a subpoena made under rule 13 or by filing a motion to quash a subpoena that is issued summarily under rule 12.

subpoenas. APWU opposes the Postal Service's request and urges the Commission to adopt rule 15(e) as proposed. APWU Comments at 1–2.

The concern expressed by the Postal Service focuses primarily on the requirement in proposed rule 15(e) that to justify the failure or refusal to provide discovery of electronically stored information, the Postal Service (or other Covered Person) must show "by clear and convincing evidence" that the burden or cost of production is undue. *See* Postal Service Comments at 10–11. The Postal Service argues that a more appropriate standard would be a "preponderance of the evidence." *Id.* Implicit in the Postal Service's argument is also an assumption that a determination of whether a burden or cost was "undue" would not involve a balancing of competing considerations (such as the cost of producing the requested information, the importance of the issues, and the importance of the requested discovery in resolving the issues), as would occur in Federal district court under Fed. R. Civ. P. rule 26(b)(2)(C).[20] APWU responds by pointing out that proposed rule 11, which makes provision for attaching conditions to a subpoena, should provide adequate protection to the Postal Service. APWU Comments at 2.

In proposing rule 15(e), the Commission was not attempting to require the production of information without regard to cost, burden, or consideration of other relevant factors of the type discussed by the Postal Service. What the Commission was attempting to make clear was that it would not accept vague and unsubstantiated claims of burden or cost as justification for failing or refusing to provide necessary information. Indeed, cost and other relevant factors should be given due consideration in the process of considering the attachment of conditions to a subpoena, as APWU suggests.

Upon consideration of the points presented by the Postal Service and APWU, the Commission concludes that the appropriate context for resolving claims of burden, cost, and protective conditions is before the Covered Person responds to a subpoena. Accordingly, the Commission is removing subsection (e) from proposed rule 15 and is modifying proposed rules 12 and 13 as described below.

Proposed rule 12 covers situations in which subpoenas are issued without a third-party request. Subsection (d) of that rule will be modified by requiring that motions to quash, limit, or condition a subpoena that allege undue burden or cost must state with particularity the basis for such a claim.[21] Similar requirements will be added to proposed rules 13(a)(3) and 13(b)(2). Those latter subsections provide for answers to third-party requests for subpoenas. By requiring the issues of undue burden and cost be addressed prior to the compliance stage, participants (including the Postal Service and Covered Persons) will be able to address all relevant factors that relate to alleged costs and burdens in a more timely manner that will hopefully foster compliance. As APWU suggests, applicable conditions, if any, can be attached prior to issuance of the subpoena.

Rule 31 [22] *Deposition orders.* As enacted, 39 U.S.C. 504(f)(2)(B) authorizes the Chairman of the Commission, any Commissioner designated by the Chairman, and any administrative law judge appointed by the Commission under 5 U.S.C. 3105 to order the taking of depositions and responses to written interrogatories by a Covered Person. Proposed rule 31 closely follows the text of section 504(f)(2)(B).

The Postal Service acknowledges that, as proposed, rule 31 directly tracks the provisions of section 504(f)(2)(B). Postal Service Comments at 12. However, it is concerned that, without clarification, rule 31 could be used to circumvent certain restrictions contained in rule 33 of the Commission's existing rules of practice. That latter rule is limited in its application to Commission proceedings. *Id.* at 13.

The Postal Service proposes that the Commission clarify that parties who seek information or testimony that they believe would be useful in Commission proceedings should pursue discovery under the rules of practice (which would include rule 33 of the rules of practice), not proposed rule 31 that is being adopted pursuant to section 504(f)(2)(B). *Id.* at 13–14. Alternatively, the Postal Service requests that the Commission clarify that proposed rule 31 is subject to the same conditions applicable to discovery under rule 33 of the rules of practice.

APWU opposes the Postal Service's suggested clarifications. APWU Comments at 2–3. The Public Representative agrees with the Commission's statement in Order No. 293 that the authority embodied by proposed rule 31 "can be used within the scope of an adjudicatory hearing as an alternative to the procedures in part 3001 [the Commission's rules of practice] for compelling discovery." Public Representative Comments at 8.

In light of these divergent views, clarification is in order. It is useful, first, to summarize the background against which the rule is being proposed. The Commission's rules of practice apply to proceedings before the Commission. *See* 39 CFR 3001.3. In those proceedings, participants have the opportunity to propound written interrogatories to other participants or to request the Commission for authorization to take the deposition of a witness. *See* 39 CFR 3001.26 and 3001.33. Historically, a refusal to respond to a written interrogatory or to appear at a deposition presented a serious problem for the Commission. Although rule 26(g) provided for the issuance of orders compelling responses to written interrogatories, there were, on occasion, situations in which the Postal Service refused to comply with such an order. *See* Order No. 293 at 4, n.3. Rule 33 governing depositions presented a similar problem in that the rule did not include provision for compelling appearance for a deposition.

Against this background, Congress enacted section 504(f)(2)(B). This new section provides the authority for ordering the taking of depositions and responses to written interrogatories by a Covered Person. Thus, in a proceeding in which the Commission has authorized a deposition in response to an application made pursuant to rule 33 of the rules of practice, the Commission can, by virtue of section 504(f)(2)(B) and proposed rule 31, compel a Covered Person to appear for the deposition. Similarly, in a Commission proceeding, the Commission can compel a Covered Person to respond to written interrogatories propounded under rule 26 of the rules of practice.

In addition, the authority provided by section 504(f)(2)(B) and proposed rule 31 empowers the Chairman, a Commissioner designated by the Chairman, or an administrative law judge appointed under 5 U.S.C. 3105, sua sponte, to order depositions and responses to written interrogatories,

[20] The Commission would note that its rules of practice, which are applicable to the subpoena process by rule 1(b), do not currently contain a rule analogous to Fed. R. Civ. P. rule 26. The Commission has, however, from time to time relied on the principles embodied in Fed. R. Civ. P. rule 26. *See, e.g.,* Order No. 381, Docket No. C2009–1, Order Affirming Presiding Officer's Ruling C2009–1/12, January 7, 2010, at 11–12. In the current context, the Postal Service's reference to Fed. R. Civ. P. rule 26(b)(2)(C) is appropriate.

[21] The requirement that the showing of undue burden or cost be made "with particularity" avoids unintended implications of the "clear and convincing evidence" standard. The requirement of a showing "with particularity" is also consistent with the Commission's existing rules of practice. *See* 39 CFR 3001.26, 3001.27, and 3001.28.

[22] *See* n.5, supra.

even if no participant in a Commission proceeding has requested such a deposition or propounded such a written interrogatory.

Such depositions and responses can also be ordered sua sponte when no proceeding is pending. Section 504(f)(2)(B) authorizes the Chairman, a Designated Commissioner, or an administrative law judge to order depositions and responses to written interrogatories in order to obtain information to be used to prepare reports under title 39. This authority also goes beyond the scope of a Commission proceeding.

From the Commission's perspective, proposed rule 31 is a mechanism for enforcing discovery in Commission proceedings and for pursuing, sua sponte, discovery and information needed to prepare reports by means of either depositions or written interrogatories.

It was with the foregoing situations in mind that the Commission stated in Order No. 293 that "the authority to issue orders under section 504(f)(2)(B) can...be exercised in the context of an adjudicatory hearing as an alternative to the procedures in part 3001 for compelling discovery...[and that an] order can also be issued under section 504(f)(2)(B) outside the context of a Commission proceeding." *Id.* at 16.

Appendix A to part 3005—Subpoena form. Valpak proposes that the subpoena form attached as Appendix A to Order No. 293 be revised to add a field to specify a report for which information is sought. Valpak Comments at 2–3. Valpak makes this suggestion to "ensure that the jurisdictional basis for each subpoena would be clarified at the outset" and, presumably, to guard against the unauthorized use of the Commission's subpoena power. *Id.* at 3.

The Commission accepts Valpak's suggested modification to the subpoena form. Whether or not the Commission has the authority to issue specific subpoenas will depend upon the facts and circumstances surrounding the issuance of those subpoenas and upon their formulations and purposes. Additional relevant information on the subpoena form may eliminate confusion and reduce controversy.

V. Section–By–Section Analysis of the Rule

Section 3001.3 Scope of rules. The amendment to rule 3 of the rules of practice clarifies that the rules of practice apply both to proceedings before the Commission and to the procedures in part 3005 for compelling the production of information by the Postal Service. This change is consistent with the inclusion in part 3005 of references to specific rules of practice.

Section 3005.1 Scope of rules. This proposed rule states that part 3005 implements 39 U.S.C. 504(f). It also makes applicable the rules of practice in part 3001, unless otherwise ordered by the Commission.

Section 3005.2 Terms defined. This proposed rule provides definitions for the terms "administrative law judge," "Chairman," "covered person," and "designated Commissioner" as used in part 3005.

Section 3005.11 General rule—subpoenas. This proposed rule sets forth the basic requirements for the issuance of a subpoena pursuant to 39 U.S.C. 504(f)(2)(A). Subpoenas may only be issued by the Chairman, a designated Commissioner, or an administrative law judge. When authorized in writing by a majority of the Commissioners then in office, a subpoena shall be issued by the Chairman, a designated Commissioner, or an administrative law judge. This rule also lists the purposes for which a subpoena may be issued; the types of conditions or limitations that may be imposed on the subpoena to protect the recipient of the subpoena from oppression, undue burden, or expense, including the possible imposition of confidentiality or non-disclosure conditions as provided in 39 CFR part 3007; and identifies the rule that establishes the service requirements for a subpoena. A proposed subpoena form is provided as Appendix A to Part 3005–Subpoena Form.

Section 3005.12 Subpoenas issued without receipt of a third-party request. This proposed rule provides for the issuance of a subpoena without a request having been received from a third party. For example, the Commission could deem a subpoena necessary if the Postal Service were to refuse to provide information during preliminary review of a Postal Service filing. Or a subpoena could be needed if the Postal Service were to refuse to provide information needed for the preparation of a report. Finally, a presiding officer might deem it necessary to obtain the issuance of a subpoena to enforce a presiding officer's information request. In such cases, there would be no "third party" request for the subpoena.

From a procedural standpoint, the request would be made directly to the full Commission by a Commissioner or presiding officer. To insure that the Postal Service and other interested persons, including Covered Persons potentially affected by the subpoena, have an opportunity to oppose the subpoena, or to limit or condition its scope and operation, any duly authorized subpoena would be subject to a motion under rule 21(a) to quash, limit, or condition the subpoena. Replies to such a motion could be made by any interested person under rule 21(b).

In the vast majority of circumstances, Covered Persons would be given an opportunity to produce information voluntarily before a subpoena is issued under this section. However, provision is also made for the summary issuance of a subpoena without issuance of a prior information request. While the Commission would expect the summary issuance of a subpoena to rarely, if ever, be necessary, it is including provision for such summary issuance in order to insure the ability to act promptly if necessary. In such cases, the recipient of the subpoena and other interested persons, would have an opportunity following issuance of the subpoena to file a motion to quash the subpoena, limit its scope, or to place conditions on the subpoena. Motions alleging undue burden or cost would be required to state with particularity the basis for any such claim. Pending resolution of the motion, Covered Persons would be required to maintain the information being sought by the subpoena.

Section 3005.13 Subpoenas issued in response to a third-party request. This proposed rule establishes procedures by which subpoenas can be requested by third parties. One set of procedures applies to those situations in which the Commission has ordered hearings. Typically, in those cases the subpoena will be available as a means of enforcing the discovery rules in part 3001 of the Commission's rules of practice. A second set of procedures applies to situations in which no hearings have been ordered, such as an annual compliance review. In these cases, information will typically be sought by means of information requests, including information requests that have been proposed by a third party and issued by the Commission or a Commissioner. In this latter situation, a third party would be able to request the issuance of a subpoena to enforce the information request. Requests under either procedure must include certain minimum showings and demonstrations in order to be granted, including showings of relevance of the information and adequate specification of the information requested.

The rule has been revised to require the Postal Service to provide the name, business address and phone number of any persons to whom the Postal Service transmits the subpoena request.

Covered Persons expected to produce the requested information will have an opportunity to present any objections to the issuance of a subpoena. All objections, including allegations of undue burden or cost, must state with particularity the basis for such claims.

Section 3005.14 Service of subpoenas. This proposed rule specifies the manner in which subpoenas are to be served. The Commission originally proposed that subpoenas be served initially upon the Postal Service with the requirement that the Postal Service transmit and deliver the subpoena to the officer, employee, agent, or contractor ultimately responsible for testifying or for otherwise providing the information being sought. The Commission has retained that procedure when information is sought from existing Postal Service officers, employees, and from those agents and contractors having an agency or contractual relationship at the time the subpoena is issued. However, the Commission has revised the service requirements to provide for personal service by the Commission (or by third parties who requested the subpoena) upon former Postal Service officers, employees, agents, or contractors. Conforming changes have been made to the provisions governing proof of service upon the Postal Service and Covered Persons and proof of transmission by the Postal Service to Covered Persons.

Changes have also been made to provide for shorter or longer return periods as may be ordered by the Commission in specific cases. The provision for longer return of service periods has been made, in part, to accommodate longer periods that may be needed to accomplish service upon foreign persons or entities. Finally, revisions have been made to the provisions of notice to the public of service, proof of transmission, and the return date of the subpoena.

Section 3005.15 Duties in responding to a subpoena. This proposed rule specifies the manner in which the recipient of a subpoena will be required to respond to the subpoena. It covers such subjects as the form in which documentary information is to be produced; the manner in which electronically stored information is to be produced; and the showing that must be made if information is not disclosed on grounds of privilege, confidentiality, or trade secret. Requests for confidential treatment of information produced in response to a subpoena are to be made in the manner provided in part 3007 of the Commission's regulations. Removed from the final rule is proposed § 3005.15(e). That section had required that claims of undue burden or cost made to support a failure or refusal to produce electronically stored information be supported by clear and convincing evidence. In place of that section, modifications have been made to §§ 3005.12(d), 3005.13(a)(3), and 3005.13(b)(2). Those latter modifications require that any claim of undue burden or cost made in motions to quash, limit, or condition a subpoena, or in answers in opposition to requests for subpoenas must be supported by a particularized showing of the basis for such claims.

Section 3005.16 Enforcement of subpoenas. This proposed rule implements the authority in 39 U.S.C. 504(f)(3) under which the Commission can seek judicial enforcement of an administrative subpoena issued pursuant to 39 U.S.C. 504(f)(2)(A).

Section 3005.21 Authority to order depositions and responses to written interrogatories. This proposed rule implements the authority of the Chairman, any designated Commissioner, or any administrative law judge to order that a deposition be taken of a Covered Person or that the Covered Person respond to a written interrogatory.

VI. Effective Date

Generally, a rule becomes effective not less than 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner. *Id.* Since the rules promulgated by this order are being adopted after public notice and opportunity for comment, procedures that are not statutorily required for the adoption of procedural rules, the Commission finds that good cause exists to make the rules promulgated by this order effective upon their publication in the **Federal Register**.

VII. Ordering Paragraphs

It is ordered:

1. The Commission hereby adopts the final rules for obtaining information from the Postal Service that follow the Secretary's signature as part of 39 CFR part 3005.

2. The Commission hereby adopts conforming rule changes to 39 CFR part 3001 that follow the Secretary's signature.

3. These rules shall take effect upon publication of this order in the **Federal Register**.

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

List of Subjects

39 CFR Part 3001

Administrative practice and procedure, Postal Service.

39 CFR Part 3005

Administrative practice and procedure, Confidential business information, Postal Service, Reporting and recordkeeping requirements.

By the Commission.

Shoshana M. Grove,

Secretary.

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

Part 3001–RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 is revised to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

■ 2. Revise §3001.3 to read as follows:

§3001.3 Scope of rules.

The rules of practice in this part are applicable to proceedings before the Postal Regulatory Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer and, as specified in part 3005 of this chapter to the procedures for compelling the production of information by the Postal Service. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

■ 3. Add part 3005 to read as follows:

PART 3005—PROCEDURES FOR COMPELLING PRODUCTION OF INFORMATION BY THE POSTAL SERVICE

Subpart A–General

Sec.
3005.1 Scope and applicability of other parts of this title.
3005.2 Terms defined for purposes of this part.

Subpart B—Subpoenas

3005.11 General rule—subpoenas.
3005.12 Subpoenas issued without receipt of a third-party request.
3005.13 Subpoenas issued in response to a third-party request.
3005.14 Service of subpoenas.
3005.15 Duties in responding to a subpoena.
3005.16 Enforcement of subpoenas.

Subpart C—Depositions and Written Interrogatories

3005.21 Authority to order depositions and responses to written interrogatories.

Appendix A to Part 3005—Subpoena Form

Authority: Authority: 39 U.S.C. 503; 504; 3651(c); 3652(d).

Subpart A—General

§ 3005.1 Scope and applicability of other parts of this title.

(a) The rules in this part govern the procedures for compelling the production of information by the Postal Service pursuant to 39 U.S.C. 504(f).

(b) Part 3001, subpart A, of this chapter applies unless otherwise stated in this part or otherwise ordered by the Commission.

§ 3005.2 Terms defined for purposes of this part.

(a) *Administrative law judge* means an administrative law judge appointed by the Commission under 5 U.S.C. 3105.

(b) *Chairman* means the Chairman of the Commission.

(c) *Covered person* means an officer, employee, agent, or contractor of the Postal Service.

(d) *Designated Commissioner* means any Commissioner who has been designated by the Chairman to act under this part.

Subpart B—Subpoenas

§ 3005.11 General rule–subpoenas.

(a) Subject to the provisions of this part, the Chairman, any designated Commissioner, and any administrative law judge may issue a subpoena to any covered person.

(b) The written concurrence of a majority of the Commissioners then holding office shall be required before any subpoena may be issued under this subpart. When duly authorized by a majority of the Commissioners then holding office, a subpoena shall be issued by the Chairman, a designated Commissioner, or an administrative law judge.

(c) Subpoenas issued pursuant to this subpart may require the attendance and presentation of testimony or the production of documentary or other evidence with respect to any proceeding conducted by the Commission under title 39 of the United States Code or to obtain information for preparation of a report under that title.

(d) Subpoenas issued pursuant to this subpart shall include such conditions as may be necessary or appropriate to protect a covered person from oppression, or undue burden or expense, including the following:

(1) That disclosure may be had only on specified terms and conditions, including the designation of the time or place;

(2) That certain matters not be inquired into, or that the scope of disclosure be limited to certain matters;

(3) That disclosure occur with no one present except persons designated by the Commission;

(4) That a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way as provided in part 3007 of this chapter; and

(5) Such other conditions deemed necessary and appropriate under the circumstances presented.

(e) Subpoenas shall be served in the manner provided by § 3005.14.

§ 3005.12 Subpoenas issued without receipt of a third-party request.

(a) A subpoena duly authorized by a majority of the Commissioners then holding office may be issued by the Chairman, a designated Commissioner, or an administrative law judge under § 3005.11 without a request having been made by a third party under § 3005.13.

(b) Except as provided in paragraph (c) of this section, a subpoena shall not be issued until after the covered person has been provided an opportunity to produce the requested information voluntarily.

(c) A subpoena may be issued summarily without first providing an opportunity to produce the requested information voluntarily if a delay in the issuance of the subpoena could unreasonably limit or prevent production of the information being sought.

(d) Subpoenas issued under this section shall be issued subject to the right of the Postal Service and other interested persons to file a motion pursuant to § 3001.21(a) of this chapter to quash the subpoena, to limit the scope of the subpoena, or to condition the subpoena as provided in § 3005.11(d). Such motion shall include any objections to the subpoena that are personal to the covered person responsible for providing the information being sought. Motions alleging undue burden or cost must state with particularity the basis for such claims. Answers to the motion may be filed by any interested person pursuant to § 3001.21(b) of this chapter. Pending the resolution of any such motion, the covered person shall secure and maintain the requested information.

§ 3005.13 Subpoenas issued in response to a third-party request.

(a) *Procedure for requesting and issuing subpoenas when hearings have been ordered.* A participant in any proceeding in which a hearing has been ordered by the Commission may request the issuance of a subpoena to a covered person pursuant to § 3005.11.

(1) Subpoenas may be requested to enforce an order to compel previously issued pursuant to the rules of practice with which the Postal Service has failed to comply.

(2) Requests for subpoenas under this section shall be made by written motion filed with the presiding officer in the manner provided in § 3001.21 of this chapter. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address and business phone number of the persons to whom the request has been transmitted.

(3) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other participant. Answers raising objections, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by § 3001.21(b) of this chapter.

(4) The presiding officer shall forward copies of the motion and any responses to the Commission together with a recommendation of whether or not the requested subpoena should be issued and, if so, the scope and content thereof and conditions, if any, that should be placed on the subpoena. Copies of the presiding officer's recommendation shall be served in accordance with § 3001.12 of this chapter.

(5) Following receipt of the materials forwarded by the presiding officer, the Commissioners shall determine whether the requested subpoena should be issued and, if so, whether any conditions should be placed on the scope or content of the subpoena or on the responses to the subpoena. The Commissioners may, but are not required, to entertain further oral or written submissions from the Postal Service or the participants before acting on the request. In making their determination, the Commissioners are not bound by any recommendation of a presiding officer.

(b) *Procedure for requesting and issuing subpoenas when no hearings have been ordered.* Any person may request the issuance of a subpoena to a covered person pursuant to § 3005.11 to

enforce an information request issued by the Commission or a Commissioner even though no hearings have been ordered by the Commission.

(1) A request for the issuance of a subpoena shall be made by motion as provided by § 3001.21 of this chapter. A copy of the request shall be served upon the Postal Service as provided by § 3001.12 of this chapter and by forwarding a copy to the General Counsel of the Postal Service, or such other person authorized to receive process by personal service, by Express Mail or Priority Mail, or by First-Class Mail, Return Receipt requested. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address and business phone number of the persons to whom the request has been transmitted. Proof of service of the request shall be filed with the Secretary by the person requesting the subpoena. The Secretary shall issue a notice of the filing of proof of service and the deadline for filing answers to the request.

(2) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other person. Answers raising objections, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by § 3001.21(b) of this chapter.

(3) Following receipt of the request and any answers to the request, the Commissioners shall determine whether the requested subpoena should be issued and, if so, whether any conditions should be placed on the scope or content of the subpoena or on the responses to the subpoena. The Commissioners may, but are not required, to entertain further oral or written submissions before acting. A majority of the Commissioners then holding office must concur in writing before a subpoena may be issued.

(c) *Contents of requests for subpoenas.* Each motion requesting the issuance of a subpoena shall include the following:

(1) A demonstration that the subpoena is being requested with respect to a proceeding conducted by the Commission under title 39 of the United States Code or that the purpose of the subpoena is to obtain information to be used by the Commission to prepare a report under title 39 of the United States Code;

(2) A showing of the relevance and materiality of the testimony, documentary or other evidence being sought;

(3) Specification with particularity of any books, papers, documents, writings, drawings, graphs, charts, photographs, sound recordings, images, or other data or data compilations stored in any medium from which information can be obtained, including, without limitation, electronically stored information which is being sought from the covered person;

(4) In situations in which a hearing has been ordered, the request must include in addition to the information required by paragraphs (c)(1), (2) and (3) of this section, a certification that the covered person has failed to comply with an order compelling discovery previously issued pursuant to the Commission's rules of practice; and

(5) In situations in which a hearing has not been ordered, the request must include in addition to the information required by paragraphs (c)(1), (2) and (3) of this section, an explanation of the reason for the request and the purposes for which the appearance, testimony, documentary or other evidence is being sought, and a certification that the Postal Service has failed to comply with a previously issued Commission order or information request.

§ 3005.14 Service of subpoenas.

(a) *Manner of service.* (1) *Existing Postal Service officers and employees.* In addition to electronic service as provided by § 3001.12(a) of this chapter, subpoenas directed to existing Postal Service officers and employees must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to the existing officers and employees responsible for providing the information being sought by the subpoena. Subpoenas served upon the Postal Service and transmitted to Postal Service officers and employees shall be accompanied by a written notice of the return date of the subpoena.

(2) *Existing Postal Service agents and contractors.* In addition to electronic service as provided by § 3001.12(a) of this chapter, subpoenas directed to existing Postal Service agents and contractors must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to existing agents and contractors responsible for providing the information being sought by the subpoena. Service upon such agents and contractors shall be accompanied by a written notice of the return date of the subpoena.

(3) *Prior Postal Service officers, employees, agents, and contractors.* Subpoenas directed to Postal Service officers, employees, agents, and contractors who, at the time the subpoena is issued, are no longer officers or employees of the Postal Service or are no longer agents or contractors in an existing agency or contract relationship with the Postal Service, must be served by personal service. Service upon such officers, employees, agents, or contractors shall be accompanied by a written notice of the return date of the subpoena.

(4) *Service arrangements.* Arrangements for service upon the Postal Service under §§ 3001.14(a)(1) or 14(a)(2) of this chapter or upon former Postal Service officers, employees, agents, or contractors under § 3001.14(a)(3) of this chapter shall be arranged either by the Commission or by the third party who requested issuance of the subpoena.

(b) *Return of service and proof of transmission.* (1) *Return of service.* Proof of service under § 3001.14(a) of this chapter must be filed with the Secretary within 2 business days following service, unless a shorter or longer period is ordered by the Commission, and must be accompanied by certifications of:

(i) The manner, date, and time of delivery of the subpoena;

(ii) The name, business address, telephone number, and e-mail address of the perseon upon whom the subpoena was served; and

(iii) The return date of the subpoena.

(2) *Proof of transmission.* The Postal Service shall within 2 business days of transmission of a subpoena by the Postal Service to an existing Postal Service officer, employee, agent, or contractor pursuant to §§ 3001.14(a)(i) or (ii) of this chapter, or such shorter or longer period ordered by the Commission, file with the Secretary a certification of:

(i) The manner, date, and time of delivery of the subpoena;

(ii) The name, business address, telephone number, and e-mail address of the person to whom the subpoena was transmitted; and

(iii) The return date of the subpoena.

(c) *Notice of service, proof of transmission, and return date.* The Secretary shall post a notice of service and proof of transmission upon the Commission's Web site which specifies the return date of the subpoena.

§ 3005.15 Duties in responding to a subpoena.

(a) A covered person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(b) If a subpoena does not specify the form or forms for producing electronically stored information, a covered person responding to a subpoena must produce the information in a form or forms in which the covered person ordinarily maintains it or in a form or forms that are reasonably usable.

(c) A covered person responding to a subpoena need not produce the same electronically stored information in more than one form.

(d) A covered person commanded to produce and permit inspection or copying of designated electronically stored information, books, papers, or documents need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(e) A covered person who fails or refuses to disclose or provide discovery of information on the grounds that the information is privileged or subject to protection as a trade secret or other confidential research, development, or commercial information must expressly support all such claims and shall provide a description of the nature of the information and the potential harm that is sufficient to enable the Commission to evaluate and determine the propriety of the claim.

(f) Request for confidential treatment of information shall be made in accordance with part 3007 of this chapter.

§ 3005.16 Enforcement of subpoenas.

In the case of contumacy or failure to obey a subpoena issued under this subpart, the Commission may apply for an order to enforce its subpoena as permitted by 39 U.S.C. 504(f)(3).

Subpart C—Depositions and Written Interrogatories

§ 3005.21 Authority to order depositions and responses to written interrogatories.

The Chairman, any designated Commissioner, or any administrative law judge may order the taking of depositions and responses to written interrogatories by a covered person with respect to any proceeding conducted under title 39 of the United States Code or to obtain information to be used to prepare a report under that title.

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Appendix A to Part 3005—Subpoena Form

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

In the Matter of:

[Case Name – If Applicable] [Docket No. – If Applicable]

[Report Name – If Applicable]

SUBPOENA

TO:

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to provide testimony in the above matter.

PLACE OF TESTIMONY	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above matter.

PLACE OF DEPOSITION	DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (attach additional sheet if necessary).

PLACE	DATE AND TIME

ISSUING OFFICIAL'S SIGNATURE	DATE

ISSUING OFFICIAL'S NAME AND PHONE NUMBER

ISSUING OFFICIAL IS (CHECK ONE):

☐ CHAIRMAN

☐ COMMISSIONER DESIGNATED BY THE CHAIRMAN

☐ ADMINISTRATIVE LAW JUDGE APPOINTED UNDER 5 U.S.C. 3105

I HEREBY CERTIFY THAT THE MAJORITY OF THE COMMISSIONERS CURRENTLY HOLDING OFFICE HAVE PREVIOUSLY CONCURRED IN WRITING WITH THE ISSUANCE OF THIS SUBPOENA.

ISSUING OFFICIAL'S SIGNATURE DATE

39 CFR § 3005.15:

(a) A covered person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(b) If a subpoena does not specify the form or forms for producing electronically stored information, a covered person responding to a subpoena must produce the information in a form or forms in which the covered person ordinarily maintains it or in a form or forms that are reasonably usable.

(c) A covered person responding to a subpoena need not produce the same electronically stored information in more than one form.

(d) A covered person commanded to produce and permit inspection or copying of designated electronically stored information, books, papers, or documents need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

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H.R. 4851/P.L. 111–157

Continuing Extension Act of 2010 (Apr. 15, 2010; 124 Stat. 1116)

Last List April 15, 2010

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