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WHEN: Tuesday, February 22, 2011
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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AM28**

### Prevailing Rate Systems; Redefinition of the Shreveport, LA; Texarkana, TX; Milwaukee, WI; and Southwestern Wisconsin Appropriated Fund Federal Wage System Wage Areas

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the Shreveport, LA; Texarkana, TX; Milwaukee, WI; and Southwestern Wisconsin appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Upshur County, TX, from the Texarkana wage area to the Shreveport wage area and Oconto County, WI, from the Southwestern Wisconsin wage area to the Milwaukee wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the counties proposed for redefinition to a nearby FWS survey area.

**DATES:** This regulation is effective on March 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

**SUPPLEMENTARY INFORMATION:** On September 24, 2010, the U.S. Office of Personnel Management (OPM) issued a proposed rule (75 FR 58339) to redefine Upshur County, TX, from the Texarkana, TX, wage area to the Shreveport, LA, wage area and Oconto County, WI, from the Southwestern Wisconsin wage area to the Milwaukee, WI, wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the above counties to a nearby FWS survey area. The proposed rule had a 30-day comment period during which OPM received no comments.

### Regulatory Flexibility Act

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

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings for the Shreveport, LA; Texarkana, TX; Milwaukee, WI; and Southwestern Wisconsin wage areas to read as follows:

### Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

**LOUISIANA**

* * * * *

**Shreveport**

*Survey Area*

Louisiana: (parishes)
- Bossier
- Caddo
- Webster

*Area of Application. Survey area plus:*

Louisiana: (parishes)
- Bienville
- Claiborne
- De Soto
- East Carroll
- Jackson
- Lincoln
- Morehouse
- Ouachita
- Red River
- Richland
- Union
- West Carroll

Texas:
- Cherokee
- Gregg
- Harrison
- Panola
- Rusk
- Upshur

* * * * *

**TEXAS**

* * * * *

**Texarkana**

*Survey Area*

Texas:
- Bowie
- Arkansas:
- Little River
- Miller

*Area of Application. Survey area plus:*

Texas:
- Camp
- Cass
- Franklin
- Marion
- Morris
- Red River
- Titus

Arkansas:
- Columbia
- Hempstead
- Howard
- Lafayette
- Nevada
- Sevier

* * * * *

**WISCONSIN**

* * * * *

**Milwaukee**

*Survey Area*

Wisconsin:
- Milwaukee
- Ozaukee
- Washington
- Waukesha

*Area of Application. Survey area plus:*

Wisconsin:
- Brown
- Calumet
- Door
- Fond du Lac
- Kewaunee
- Manitowoc
- Oconto
- Outagamie
- Racine
- Sheboygan

Walworth
Winnebago

**Southwestern Wisconsin**

*Survey Area*

Wisconsin:
Chippewa
Eau Claire
La Crosse
Monroe
Trempealeau

*Area of Application. Survey area plus:*

Wisconsin:
Adams
Barron
Buffalo
Clark
Crawford
Dunn
Florence
Forest
Jackson
Juneau
Langlade
Lincoln
Marathon
Marinette
Menominee
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Shawano
Taylor
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Waupaca
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Minnesota:
Fillmore
Houston
Wabasha
Winona

* * * * *

[FR Doc. 2011–3773 Filed 2–18–11; 8:45 am]

BILLING CODE 6325–39–P

## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Part 532

**RIN 3206–AM22**

## Prevailing Rate Systems: Santa Clara, CA, Tulsa County, OK, and Angelina County, TX

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a final rule to define Tulsa County, Oklahoma, as an area of application to the Oklahoma, OK, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and Angelina County, Texas, as an area of application to the Dallas, TX, NAF FWS wage area. These changes are necessary because there are NAF FWS employees working in Tulsa and Angelina Counties and the counties are not currently defined to NAF wage areas. In addition, this final rule correctly amends the Nationwide Schedule of Nonappropriated Fund Regular Wage Schedules by removing, under the State of California, "Santa Clara," which was abolished as a NAF FWS wage area by a final rule published on March 9, 2009.

**DATES:** This regulation is effective on March 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

**SUPPLEMENTARY INFORMATION:** On August 3, 2010, the U.S. Office of Personnel Management (OPM) issued a proposed rule (75 FR 45557) to define Tulsa County, Oklahoma, as an area of application to the Oklahoma, OK, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and Angelina County, Texas, as an area of application to the Dallas, TX, NAF FWS wage area. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. The proposed rule had a 30-day comment period during which OPM received no comments.

### CFR Correction

In addition, this final rule corrects Appendix B to subpart B of part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Schedules by removing, under the State of California, "Santa Clara," which was abolished as a NAF FWS wage area by a final rule (74 FR 9951) published on March 9, 2009.

### Regulatory Flexibility Act

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

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

### Appendix B to Subpart B of Part 532—[Amended]

■ 2. Appendix B to subpart B is amended, in the table under the State of California by removing the entry for "Santa Clara."

■ 3. Appendix D to subpart B is amended in the table by revising the wage area listing for the Oklahoma, OK, and Dallas, TX, NAF wage areas to read as follows:

### Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

**OKLAHOMA**

* * * * *

**Oklahoma**

*Survey Area*

Oklahoma:
Oklahoma

*Area of Application. Survey area plus:*

Oklahoma:
Garfield
Muskogee
Pittsburg
Tulsa

* * * * *

**TEXAS**

* * * * *

**Dallas**

*Survey Area*

Texas:
Dallas

*Area of Application. Survey area plus:*

Texas:
Angelina
Fannin
Galveston
Harris

* * * * *

[FR Doc. 2011–3775 Filed 2–18–11; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Delegation of Authority to Under Secretary for Research, Education, and Economics

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule reaffirms the delegation of authority from the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics for requests for the United States Department of Agriculture Interested Government Agency (IGA) support for waivers of the Immigration and Nationality Act (INA).

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jason Groves, Foreign Visitor Specialist, Agricultural Research Service, United States Department of Agriculture, Beltsville, MD 20705, (301) 504–4832.

**SUPPLEMENTARY INFORMATION:** The INA (Title 8 of the U.S. Code) provides foreign nationals an opportunity to participate in exchange programs in the United States under provisions of the Mutual Educational and Cultural Exchange Act (also known as the Fulbright-Hays Act) of 1961. At the conclusion of their program, an exchange program participant is expected to return to their home country to utilize the experiences and skills they acquired while in the U.S. INA Section 212(e) requires 2 years of foreign residence for individuals whose participation was financed by the U.S. Government, or by the government of their nationality or legal residence. Individuals admitted to the United States who possessed or intended to acquire specialized knowledge or skills that the Secretary of State has deemed necessary for the development of their country of citizenship or legal residence will also be subject to this 2-year requirement. A foreign national is ineligible for adjustment to permanent resident status, immigration to the United States, or receipt of an employment-based non-immigrant visa until the requirement has been satisfied.

The Secretary of the Department of Homeland Security may waive the 2-year foreign residence requirement with a favorable recommendation from the Secretary of State and pursuant to a request from an interested U.S. Government agency on behalf of foreign nationals actively and substantially involved in a program or activity sponsored by or of interest to such agency. In accordance with 22 CFR 41.63(c)(2)(3), the head of the agency or their designee shall submit a request in writing which fully explains why the granting of a waiver would be in the public interest and the detrimental effect that would result to the program or activity of interest to the requesting agency if the exchange visitor were unable to continue his/her involvement.

The Secretary of Agriculture has designated the Under Secretary for Research, Education, and Economics as USDA's authorized signatory for requests for all 2-year foreign residence waivers. Pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

**List of Subjects in 7 CFR Part 2**

Authority delegations (Government agencies).

Accordingly, the Department of Agriculture amends 7 CFR part 2 as follows:

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

**Authority:** 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

■ 2. In § 2.21, paragraph (a)(9) is revised to read as follows:

**§ 2.21 Under Secretary for Research, Education, and Economics.**

(a) * * *

(9) *Related to immigration.* Serve as the designee of the Secretary pursuant to Section 212(e) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(e) and 22 CFR 41.63(2)(3).

* * * * *

Signed at Washington, DC, on January 6, 2011.

**Thomas J. Vilsack,**

*Secretary of Agriculture.*

[FR Doc. 2011–1819 Filed 2–18–11; 8:45 am]

BILLING CODE 3410–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 381

**[Docket No. RM11–5–000]**

### Annual Update of Filing Fees

February 14, 2011.

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Final Rule; annual update of Commission filing fees.

**SUMMARY:** In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This Final Rule provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2010.

**DATES:** *Effective Date:* March 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Raymond D. Johnson Jr., Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 42–66, Washington, DC 20426. 202–502–8402.

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

From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

**Annual Update of Filing Fees in Part 381; Annual Update of Filing Fees**

The Federal Energy Regulatory Commission (Commission) is issuing this Final Rule to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2010 costs. The adjusted fees announced in this notice are effective March 24, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Final Rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this Final Rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

FEES APPLICABLE TO THE NATURAL GAS POLICY ACT

| | |
|---|---|
| 1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403) | $11,720. |

FEES APPLICABLE TO GENERAL ACTIVITIES

| | |
|---|---|
| 1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a)) | $23,540. |

2. Review of a Department of Energy remedial order:

AMOUNT IN CONTROVERSY

| | |
|---|---|
| $0–9,999. (18 CFR 381.303(b)) | $100 |
| $10,000–29,999. (18 CFR 381.303(b)) | 600 |
| $10,000–29,999. (18 CFR 381.303(b)) | 600 |
| $30,000 or more. (18 CFR 381.303(a)) | 34,370 |

3. Review of a Department of Energy denial of adjustment:

AMOUNT IN CONTROVERSY

| | |
|---|---|
| $0–9,999. (18 CFR 381.304(b)) | $100 |
| $10,000–29,999. (18 CFR 381.304(b)) | 600 |
| $30,000 or more. (18 CFR 381.304(a)) | 18,020 |

4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a)) $6,750.

FEES APPLICABLE TO NATURAL GAS PIPELINES

| | |
|---|---|
| 1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b)) | $1,000.* |

*This fee has not been changed.

FEES APPLICABLE TO COGENERATORS AND SMALL POWER PRODUCERS

| | |
|---|---|
| 1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a)) | $20,240. |
| 2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a)) | 22,920. |

**List of Subjects in 18 CFR Part 381**

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

**Charles H. Schneider,**

*Executive Director.*

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

## PART 381—FEES

■ 1. The authority citation for Part 381 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

**§ 381.302 [Amended]**

■ 2. In 381.302, paragraph (a) is amended by removing "$23,140" and adding "$23,540" in its place.

**§ 381.303 [Amended]**

■ 3. In 381.303, paragraph (a) is amended by removing "$33,780" and adding "$34,370" in its place.

**§ 381.304 [Amended]**

■ 4. In 381.304, paragraph (a) is amended by removing "$17,710" and adding "$18,020" in its place.

**§ 381.305 [Amended]**

■ 5. In 381.305, paragraph (a) is amended by removing "$6,640" and adding "$6,750" in its place.

**§ 381.403 [Amended]**

■ 6. Section 381.403 is amended by removing "$11,520" and adding "$11,720" in its place.

**§ 381.505 [Amended]**

■ 7. In 381.505, paragraph (a) is amended by removing "$19,900" and adding "$20,240" in its place and by removing "$22,530" and adding "$22,920" in its place.

[FR Doc. 2011–3811 Filed 2–18–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 901

**[SATS No. AL–075–FOR; Docket No. OSM–2010–0009]**

### Alabama Regulatory Program

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

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its regulations regarding their Surface Mining Commission, who is eligible to apply for and obtain a mining license, Hearing Officers, license fees, and several minor editorial changes throughout the document such as changing "him" to "him or her" and "chairman" to "chair." Alabama revised its program to improve operational efficiency.

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Sherry Wilson, Director, Birmingham Field Office. *Telephone:* (205) 290–7280. *E-mail: swilson@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Alabama Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

**I. Background on the Alabama Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the

requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

## II. Submission of the Amendment

By letter dated May 12, 2010 (Administrative Record No. AL–661), and revised on July 14, 2010 (Administrative Record No. AL–661–006), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alabama sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the September 30, 2010, **Federal Register** (75 FR 60371). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 1, 2010.

## III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

### *A. Alabama Code § 9–16–73*

Alabama revised its code at Section 9–16–73(a) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(b). This change adds the requirements that members of the seven member Commission reflect the racial, gender, geographic, urban/rural and economic diversity of the state. This seven member board appointed by the Governor with the advice and consent of the Alabama State Senate is, pursuant to the approved state program, vested with the power and authority to implement the state Title V program acting through its director and staff. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(c) through (f) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(g). This change authorizes the Commission to meet once every month rather than once every 30 days as previously required. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(h) through (j) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

### *B. Alabama Code § 9–16–74*

Alabama revised its code at Section 9–16–74(1) through (3) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–74(4). This addition allows the Commission to promulgate rules and regulations charging reasonable fees for administration of these blasting rules, regulations, and standards including, but not limited to, fees for certifications, renewals, and continuing education for certified blaster applicants. The full text of the changes is available in the Administrative Record. There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–74(5) through (22) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

### *C. Alabama Code § 9–16–77*

Alabama revised its code at Section 9–16–77(a) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–77(b). This change amends existing provisions for the hiring or contracting with Hearing Officers to preside over administrative appeals of agency actions, continues the existing requirements that Hearing Officers be members in good standing with the Alabama State Bar and have no direct or indirect interests in a surface or underground coal mine operation, and adds a prohibition against hearing officers having been employed by or having represented a coal mine operator within the previous 24 months. This section corresponds to 30 CFR 705.1. The full text of the changes is available in the Administrative Record.

We find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

### *D. Alabama Code § 9–16–78*

Alabama revised its code at Section 9–16–78(a) through (c) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–78(d). This change deletes an existing provision of law that Hearing Officer facilities be located in a facility apart from Commission offices. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal

regulations. Therefore, we are approving it.

*E. Alabama Code § 9–16–81*

Alabama revised its code at Section 9–16–81(a) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–81(b). This change amends the existing license statute to require that only citizens of the United States or persons legally present in the United States with appropriate documentation from the Federal government and that possess a mining license may engage in surface coal mining operations within Alabama. Additionally, several minor editorial changes were made. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it. Alabama revised its code at Section 9–16–81(c) and (d) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–81(f). This change modifies existing law to remove a fixed $1,000 fee and allow the Commission to establish by rule the initial fee for a mining license and annual license update fees. Such fees must be reasonable in amount. Additionally, several minor editorial changes were made. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

*F. Alabama Code § 9–16–93*

Alabama revised its code at Section 9–16–93(b). This change deletes a requirement of existing law that cessation orders alleging imminent harm or danger include a citation for an expeditious hearing before an administrative hearing officer. The amendment conforms the Alabama Statute to the requirements of the corresponding Federal SMCRA provisions. The full text of the changes is available in the Administrative Record.

We find that the changes to this section make Alabama's program no less effective than its Federal counterparts at 30 CFR 840.13(b). Therefore, we are approving them.

Alabama revised its code at Section 9–16–93(c) through (f) with several minor editorial changes.

We find that the changes in Alabama's program are no less stringent than its Federal counterparts at 30 U.S.C. 1271 (a)(2). Therefore, we are approving them.

## IV. Summary and Disposition of Comments

*Public Comments*

We asked for public comments on the amendment and received one concerning the proposed changes to Alabama Code § 9–16–73 with respect to the Alabama program requiring that members of the seven member Alabama Surface Mining Commission reflect the racial, gender, geographic, urban/rural and economic diversity of the state. The commenter objected to using gender and race as a basis for the selection by the Alabama governor of future members of the Commission. That commenter asserted "[t]here is no justification for discrimination in this particular context." The commenter opined, "the best qualified individuals should be selected, without regard to race, ethnicity, or sex," and requested that the words "racial" and "gender" be deleted from the proposed change to the Alabama program..

The commenter cited three decisions by the U.S. Supreme Court [*Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200, 227 (1995); *Mississippi University for Women* v. *Hogan,* 458 U.S. 718 (1982); *Personnel Administrator of Mass.* v. *Feeney,* 442 U.S. 256 (1979)] and one Federal statute [Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et seq.*] in support of his objection and request. However, the cases relied upon by the commenter do not make it unconstitutional for the Governor of Alabama to appoint people to the Commission who reflect the racial, gender, geographic, urban/rural and economic diversity of the state.

In fact, *Adarand Constructors, Inc.* v. *Pena* specifically holds, "government is not disqualified from acting in response to the persistence of both the practice and the lingering effects of racial discrimination against minority groups in the United States." Rather than outlawing affirmative action as the commenter suggests, the Supreme Court requires that provisions like the one Alabama is proposing be narrowly tailored to further compelling government interests. The State of Alabama has decided that it has a compelling government interest in having the Alabama Surface Mining Commission reflect the racial, gender, geographic, urban/rural and economic diversity of the state.

In reviewing proposed amendments to the approved Alabama regulatory program, OSM does not second-guess the State's determinations about its compelling government interests. OSM's task is to determine whether the proposed regulatory changes render the Alabama program less effective than the Federal standards established by Congress. We have determined the proposed changes will not make the Alabama program less effective and we are therefore approving them.

*Federal Agency Comments*

On July 28, 2010, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–661.07). We did not receive any comments.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on July 28, 2010, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL–661.07). The EPA did not respond to our request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 28, 2010, we requested comments on Alabama's amendment (Administrative Record No. AL–661.07), but neither responded to our request.

## V. OSM's Decision

Based on the above findings, we approve the amendment Alabama sent us on May 12, 2010 and revised on July 14, 2010.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

## VI. Procedural Determinations

*Executive Order 12630—Takings*

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

*Executive Order 12866—Regulatory Planning and Review*

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

*Executive Order 12988—Civil Justice Reform*

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

*Executive Order 13132—Federalism*

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

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

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

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

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

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

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

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

**List of Subjects in 30 CFR Part 901**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 23, 2010.

**Ervin J. Barchenger,**

*Regional Director, Mid-Continent Region.*

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

## PART 901—ALABAMA

■ 1. The authority citation for Part 901 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

**§ 901.15 Approval of Alabama regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| January 5, 2010 | February 22, 2011 | ASMCRA sections 9–16–73; 9–16–74; 9–16–77; 9–16–78; 9–16–81(a) through (d) and (f); and 9–16–93(b) through (f). |

[FR Doc. 2011–3907 Filed 2–18–11; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Parts 100, 117, 147, and 165

**[USCG–2010–0399]**

### Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of expired temporary rules issued; correction.

**SUMMARY:** The Coast Guard published a document in the **Federal Register** of February 9, 2011, concerning the expiration of temporary rules. The document contained an incorrect docket number.

**DATES:** Effective February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of February 9, 2011, in FR Vol. 76, No. 27, on page 7107, in the second column, correct the docket number [USCG–2011–0399] to read [USCG–2010–0399].

Dated: February 10, 2011.

**K.A. Sinniger,**

*Chief, Office of Regulations and Administrative Law.*

[FR Doc. 2011–3867 Filed 2–18–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AN65**

### Copayments for Medications After June 30, 2010

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document affirms as final an interim final rule that froze until January 1, 2012, the copayment required for certain medications. Under those amendments, the copayment amount for veterans in the Department of Veterans Affairs (VA) health care system, enrollment priority categories 2 through 6, will remain at $8 and the copayment amount for veterans in enrollment priority categories 7 and 8 will remain at $9. The maximum annual copayment amount will also not increase. On January 1, 2012, the copayment amounts will increase based on the prescription drug component of the Medical Consumer Price Index (CPI–P). When the copayment increases, the maximum annual copayment amount automatically increases in turn.

**DATES:** *Effective Date:* This rule is effective on February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Roscoe Butler, Acting Director, Business Policy, Chief Business Office, 810 Vermont Avenue, Washington, DC 20420, 202–461–1586. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1722A(a), VA must require veterans to pay a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a nonservice-connected disability or condition. Under 38 U.S.C. 1722A(b), VA may, by regulation, increase that copayment and establish a maximum annual copayment (a "cap"). We interpret section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

On June 9, 2010, we published a final rule that affirmed as final an interim final rule that amended § 17.110 to "freeze" at $8 the copayment required for prescription medications through June 30, 2010. 75 FR 32668. Also on June 9, 2010, we published an interim final rule amending § 17.110 such that the copayment amounts are fixed at $8 for veterans in enrollment priority categories 2 through 6 of VA's health care system, and at $9 for veterans in priority categories 7 and 8 through December 31, 2011. 75 FR 32670. Any changes to these copayment amounts that would take effect after December 31, 2011, would be based on changes to the CPI–P, as described in § 17.110(b)(1)(iv).

In addition, § 17.110(b)(2) includes a cap on the total amount of copayments in a calendar year for a veteran enrolled in one of VA's health care enrollment system priority categories 2 through 6. The amount of the cap for the period from January 1, 2010, through December 31, 2011 is fixed at $960. Also under paragraph (b)(2), the "cap of $960 shall be increased by $120 for each $1 increase in the copayment amount."

In the June 9, 2010, interim final rule, we cited the previous interim final rule published on December 31, 2009 (adopted without change as a final rule on June 9, 2010 (75 FR 32668)), in which we stated that we had concerns about increasing copayments under the methodology in current 38 CFR 17.110(b)(1)(iv). 75 FR 32670. We stated that we needed "time to determine whether an increase [in copayments]

might pose a significant hardship for certain veterans and if so, what alternative approach would provide appropriate relief for these veterans," and therefore issued an interim final rule intended "to temporarily freeze copayments and the copayment cap, following which copayments and the copayment cap would increase as prescribed in § 17.110(b)." We then stated in the June 9, 2010 interim final rule that "[a]lthough we continue to believe that the CPI–P is a relevant indicator of the costs of prescriptions nationwide, we need additional time to ascertain whether there might be better indicators upon which we can base our copayment amounts." Thus, we further delayed implementation of any increases for veterans in categories 2 through 6 based on the CPI–P until January 1, 2012. We stated that we would study this issue and, depending on the results of such study, may initiate a new rulemaking on this subject rather than continue to rely on the CPI–P escalator provision to determine the copayment amount. This study is ongoing. We did not delay increases for veterans in priority categories 7 and 8 in light of our statutory responsibility to control costs under 38 U.S.C. 1722A. Also, these veterans would be less affected by an increase in copayments than veterans in priority categories 2 through 6, who likely have a greater need for medical care due to their disabilities or conditions of service. Therefore, the copayment amount for veterans in priority categories 7 and 8 increased to $9.

We received one public comment on the interim final rule that extended the delay for veterans in priority categories 2 through 6. The commenter suggested that VA consider an alternative system for copayments, which would base the copayments on the actual costs of each medication rather than utilize a standard copayment rate. As noted above, we are currently considering copayment options; however, our study remains incomplete and we are not at this time ready to discuss the merits of any specific option. The commenter noted that increased copayment rates have been found in at least one study to decrease the patient's use of medical care. We are aware of this issue, and it is part of our ongoing study.

The commenter also noted that the $960 cap on copayments may be too high, and that some veterans may not have "sufficient income to support that cost." This issue is beyond the scope of the interim final rule, which delayed increases in copayments for veterans in enrollment priority categories 2 through 6. We will carefully consider the commenter's suggestion that copayments may be too high in the context of our ongoing study. Depending on the results of the study we may choose to address this issue in a future rulemaking and will address the commenter's suggestion at that time. We also note that preventing the $1 increase in copayments for veterans in priority categories 2 through 6, which would have occurred absent this rule, also prevents an associated increase in the annual copayment cap to $1080 for those veterans. Lastly, for those veterans who may have difficulty paying copayments, VA offers repayment plans and waivers as assistance.

Accordingly, we adopt without change, the amendments made in the interim final rule.

**Unfunded Mandates**

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

**Paperwork Reduction Act**

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

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

**Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. The rule affects individuals and has no impact on any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on February 8, 2011, for publication.

**List of Subjects in 38 CFR Part 17**

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

Dated: February 16, 2010.

**Robert C. McFetridge,**

*Director, Regulations Policy and Management, Department of Veterans Affairs.*

Accordingly, VA adopts the interim final rule amending 38 CFR 17.110, which was published in the **Federal Register** at 75 FR 32670 on June 9, 2010, as a final rule without change.

[FR Doc. 2011–3888 Filed 2–18–11; 8:45 am]

**BILLING CODE 8320–01–P**

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 3020

**[Docket Nos. MC2011–9, *et al.*]**

## Product List Update

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is updating the postal product lists. This action reflects the disposition of recent dockets, as reflected in Commission orders, and a publication policy adopted in a recent Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which are re-published in their entirety, include these updates.

**DATES:** *Effective Date:* February 22, 2011.

*Applicability Dates:* January 4, 2011 (Priority Mail Contract 30 (MC2011–9 and CP2011–44)) and Priority Mail Contract 31 ((MC2011–10 and CP2011–46)); January 5, 2011 (Priority Mail Contract 32 (MC2011–11 and CP2011–47)); January 6, 2011 (Express Mail Contract 10 (MC2011–12 and CP2011–48)) and Priority Mail Contract 33 (MC2011–13 and CP2011–49)); January 10, 2011 Express Mail Contract 11 (MC2011–14 and CP2011–50)); January 21, 2011 Priority Mail Contract 34 (MC2011–17 and CP2011–56)) and Priority Mail Contract 35 (MC2011–18 and CP2011–57)); and February 3, 2011 Priority Mail—Non-Published Rates, and Priority Mail—Non-Published Rates 1 (MC2011–15 and CP2011–51)).

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel at 202–789–6820.

**SUPPLEMENTARY INFORMATION:** This document identifies recent updates to the product lists, which appear as 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule.[1] Publication of updated product lists in the **Federal Register** is consistent with the Postal Accountability and Enhancement Act (PAEA) of 2006.

*Authorization.* The Commission process for periodic publication of updates was established in Order No. 445, April 22, 2010.

*Changes.* Since publication of the product lists in the **Federal Register** on January 10, 2011 (76 FR 1357), the following changes to the competitive product list have been made:

1. Priority Mail Contract 30 (MC2011–9 and CP2011–44), added January 4, 2011 (Order No. 638);
2. Priority Mail Contract 31 (MC2011–10 and CP2011–46), added January 4, 2011 (Order No. 637);
3. Priority Mail Contract 32 (MC2011–11 and CP2011–47), added January 5, 2011 (Order No. 639);
4. Express Mail Contract 5 (MC2011–12 and CP2011–48), added January 6, 2011 (Order No. 640);
5. Priority Mail Contract 33 (MC2011–13 and CP2011–49), added January 6, 2011 (Order No. 641);
6. Express Mail Contract 11 (MC2011–14 and CP2011–50), added January 10, 2011 (Order No. 644);
7. Priority Mail Contract 34 (MC2011–17 and CP2011–56), added January 21, 2011 (Order No. 655);
8. Priority Mail Contract 35 (MC2011–18 and CP2011–57), added January 21, 2011 (Order No. 656);
9. Priority Mail–Non-Published Rates, added February 3, 2011 (Order No. 661); and
10. Priority Mail–Non-Published Rates 1 (MC2011–15 and CP2011–51), added February 3, 2011 (Order No. 661).

*Updated product lists.* The referenced changes to the competitive product list are included in the product lists following the Secretary's signature.

**List of Subjects in 39 CFR Part 3020**

Administrative practice and procedure; Postal Service.

[1] Docket Nos. MC2011–9 and CP2011–44; MC2011–10 and CP2011–46; MC2011–11 and CP2011–47; MC2011–12 and CP2011–48; MC2011–13 and CP2011–49; MC2011–14 and CP2011–50; MC2011–17 and CP2011–56; MC2011–18 and CP2011–57; and MC2011–15 and CP2011–51.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

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

## PART 3020—PRODUCT LISTS

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

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

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

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

**Part A—Market Dominant Products**

*1000 Market Dominant Product List*

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

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

Periodicals
- Within County Periodicals
- Outside County Periodicals

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

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

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for

Inbound Market Dominant Services (MC2010–12 and R2010–2)
The Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Postl pakketservice Benelux BV, collectively "TNT Post" and China Post Group–United States Postal Service Letter Post Bilateral Agreement (MC2010–35, R2010–5 and R2010–6)
Market Dominant Product Descriptions
First-Class Mail
Single-Piece Letters/Postcards
Bulk Letters/Postcards
Flats
Parcels
Outbound Single-Piece First-Class Mail International
Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
High Density and Saturation Letters
High Density and Saturation Flats/Parcels
Carrier Route
Letters
[Reserved for Product Description]
Flats
Not Flat-Machinables (NFMs)/Parcels
Periodicals
Within County Periodicals
Outside County Periodicals
Package Services
Single-Piece Parcel Post
Inbound Surface Parcel Post (at UPU rates)
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail
Special Services
Ancillary Services
Address Correction Service
Applications and Mailing Permits
Business Reply Mail
Bulk Parcel Return Service
Certified Mail
Certificate of Mailing
Collect on Delivery
Delivery Confirmation
Insurance
Merchandise Return Service
Parcel Airlift (PAL)
Registered Mail
Return Receipt
Return Receipt for Merchandise
Restricted Delivery
Shipper-Paid Forwarding
Signature Confirmation
Special Handling
Stamped Envelopes
Stamped Cards
Premium Stamped Stationery
Premium Stamped Cards
International Ancillary Services
International Certificate of Mailing
International Registered Mail
International Return Receipt
International Restricted Delivery
Address List Services
Caller Service
Change-of-Address Credit Card Authentication
Confirm
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service [Reserved for Product Description]
Negotiated Service Agreements
HSBC North America Holdings Inc. Negotiated Service Agreement
Bookspan Negotiated Service Agreement
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

**Part B—Competitive Products**

*2000 Competitive Product List*

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)
Inbound International Expedited Services 4 (MC2010–37 and CP2010–126)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post (at non-UPU rates)
Royal Mail Group Inbound Air Parcel Post Agreement
Inbound Air Parcel Post (at UPU rates)
Parcel Return Service
Parcel Select
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010–14 and CP2010–13—Inbound Surface Parcel Post at Non-UPU Rates and Xpresspost-USA)
International Money Transfer Service—Outbound
International Money Transfer Service—Inbound
International Ancillary Services
Special Services
Address Enhancement Service
Greeting Cards and Stationery
Premium Forwarding Service
Shipping and Mailing Supplies
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail Contract 5 (MC2010–5 and CP2010–5)
Express Mail Contract 6 (MC2010–6 and CP2010–6)
Express Mail Contract 7 (MC2010–7 and CP2010–7)
Express Mail Contract 8 (MC2010–16 and CP2010–16)
Express Mail Contract 9 (MC2011–1 and CP2011–2)
Express Mail Contract 10 (MC2011–12 and CP2011–48)
Express Mail Contract 11 (MC2011–14 and CP2011–50)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Parcel Return Service Contract 2 (MC2011–6 and CP2011–33)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Priority Mail Contract 20 (MC2010–2 and CP2010–2)
Priority Mail Contract 21 (MC2010–3 and CP2010–3)
Priority Mail Contract 22 (MC2010–4 and CP2010–4)
Priority Mail Contract 23 (MC2010–9 and CP2010–9)
Priority Mail Contract 24 (MC2010–15 and CP2010–15)
Priority Mail Contract 25 (MC2010–30 and CP2010–75)

Priority Mail Contract 26 (MC2010–31 and CP2010–76)
Priority Mail Contract 27 (MC2010–32 and CP2010–77)
Priority Mail Contract 28 (MC2011–2 and CP2011–3)
Priority Mail Contract 29 (MC2011–3 and CP2011–4)
Priority Mail Contract 30 (MC2011–9 and CP2011–44)
Priority Mail Contract 31 (MC2011–10 and CP2011–46)
Priority Mail Contract 32 (MC2011–11 and CP2011–47)
Priority Mail Contract 33 (MC2011–13 and CP2011–49)
Priority Mail Contract 34 (MC2011–17 and CP2011–56)
Priority Mail Contract 35 (MC2011–18 and CP2011–57)
Priority Mail–Non-Published Rates
Priority Mail–Non-Published Rates 1 (MC2011–15 and CP2011–51)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Expedited Package Services 3 (MC2010–28 and CP2010–71)
Global Expedited Package Services—Non-published Rates 2 (MC2010–29 and CP2011–45)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 1A (MC2010–26, CP2010–67 and CP2010–68)
Global Plus 1B (MC2011–7, CP2011–39 and CP2011–40)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Global Plus 2A (MC2010–27, CP2010–69 and CP2010–70)
Global Plus 2B (MC2011–8, CP2011–41 and CP2011–42)
Inbound International
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34 and CP2010–95)
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
International Business Reply Service Competitive Contract 2 (MC2010–18, CP2010–21 and CP2010–22)
Competitive Product Descriptions
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Priority
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
International Money Transfer Service
Inbound Surface Parcel Post (at non-UPU rates)
International Ancillary Services
International Certificate of Mailing
International Registered Mail
International Return Receipt
International Restricted Delivery
International Insurance
Negotiated Service Agreements
Domestic
Outbound International
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2011–3805 Filed 2–18–11; 8:45 am]
BILLING CODE 7710–FW–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2011–0011; FRL–9268–2]**

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendment to the Definition of Fuel-Burning Equipment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP) amending the definition of "fuel-burning equipment." The revision removes the word "furnace" from the definition of "fuel-burning equipment" in one of Maryland's regulations and also removes the redundant definition of "fuel-burning equipment" from another section. EPA is approving these revisions to the definition of "fuel-burning equipment" in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on April 25, 2011 without further notice, unless EPA receives adverse written comment by March 24, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0011 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2011–0011, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2011–0011. 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* Website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

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

**SUPPLEMENTARY INFORMATION:**

## I. Background

The term "fuel-burning equipment" was originally defined in order to differentiate between a boiler that involves the indirect heating of air or water and fuel-burning installations that involve direct heat exchange. Fuel-burning installations, such as a kiln, are subject to the general requirements for sulfur dioxide ($SO_2$) and particulate matter, whereas fuel-burning equipment is subject to different standards in the form of pounds of $SO_2$ per million (British thermal unit) Btu per hour heat input or the sulfur content of the fuel.

Since a "furnace" is usually direct heat exchange, the State of Maryland concludes that it should not be included in the definition of "fuel-burning equipment". There is no Federal definition of the term "fuel-burning equipment," however, the term "fuel-burning equipment" is consistent with the Federal definition of the term "boiler."

## II. Summary of SIP Revision

On December 15, 2010, the State of Maryland submitted a formal revision (#10–10) to its State Implementation Plan (SIP). The SIP revision consists of amendments to Regulation .01 under COMAR 26.11.01, General Administrative Provisions and Regulation .01 under COMAR 26.11.09, Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations. The revision removes the word "furnace" from the definition of "fuel-burning equipment" in COMAR 26.11.01.01 and also removes the redundant definition of "fuel-burning equipment" from COMAR 26.11.09.01.

## III. Final Action

EPA is approving Maryland's revision which removes the word "furnace" from the definition of "fuel-burning equipment" in COMAR 26.11.01.01 and also removes the redundant definition of "fuel-burning equipment" from COMAR 26.11.09.01. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 25, 2011 without further notice unless EPA receives adverse comment by March 24, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by April 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action which pertains to Maryland's amendment to the definition of "fuel-burning equipment" may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Sulfur oxides.

Dated: February 1, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by revising the entries for COMAR 26.11.01.01 and COMAR 26.11.09.01 to read as follows:

**§ 52.1070 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

| Code of Maryland administrative regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/ citation at 40 CFR 52.1100 |
|---|---|---|---|---|
| **26.11.01 General Administrative Provisions** | | | | |
| 26.11.01.01 | Definitions | 9/20/10 | 2/22/11, [Insert page number where the document begins]. | Revision to paragraph .01B(17). |
| * | * | * | * | * |
| **26.11.09 Control of Fuel Burning Equipment and Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations** | | | | |
| 26.11.09.01 | Definitions | 9/20/10 | 2/22/11, [Insert page number where the document begins]. | Revision removes definition of "fuel-burning equipment". |
| * | * | * | * | * |

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[FR Doc. 2011–3722 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## EVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[DC103–2051; FRL–9267–6]**

## Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** EPA is updating the materials submitted by the District of Columbia that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC and the EPA Regional Office.

**DATES:** *Effective Date:* This action is effective February 22, 2011.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room Number 3334, EPA West Building, Washington, DC 20460; 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.*

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The SIP is a living document which the State revises as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and ("Identification") of plan format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998, (63 FR 67407) EPA

published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. On August 6, 2004 (69 FR 47773), September 6, 2005 (70 FR 52919) and March 19, 2009 (74 FR 11647), EPA published updates to the IBR material for the District of Columbia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the IBR materials in paragraph 40 CFR 52.470(c):

1. The addition of 20 DCMR Chapter 15.
2. A revision to the Title of 20 DCMR Chapter 4.
3. The removal of Section 403 of 20 DCMR, Chapter 4.

## II. EPA Action

In this action, EPA is doing the following:

1. Announcing the update to the IBR material as of December 1, 2010.
2. Correcting the title entry for 20 DCMR Chapter 4 in paragraph 52.470(c).
3. Making corrections to several table entries in paragraph 52.470(e) so that the date format in the "state submittal date" and "EPA approval date" columns are consistent with that of the table.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

## III. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for the District of Columbia.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 1, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart J—District of Columbia

■ 2. Section 52.470 is amended by:
■ a. Revising paragraph (b).
■ b. In paragraph(c), revising the title heading for Chapter 4.
■ c. Revising the following entries in paragraph(e): 15% Rate of Progress Plan, 1996–1999 Rate-of-Progress plan SIP, 1990 Base Year Inventory Revisions, 1999–2005 Rate-of-Progress Plan SIP Revision and the Transportation Control Measures (TCMs) in Appendix J, VMT Offset SIP Revision, Contingency Measure Plan, and 1-hour Ozone Modeled Demonstration of Attainment and Attainment Plan.

The amendments read as follows:

**§ 52.470 Identification of plan.**

* * * * *

(b) Incorporation by reference.

(1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after December 1, 2010 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of December 1, 2010.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814–2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460. For further information, call (202) 566–1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) *EPA-approved regulations.*

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| **District of Columbia Municipal Regulations (DCMR), Title 20—Environment** | | | | |
| * | * | * | * | * |
| **Chapter 4 Ambient Monitoring, Emergency Procedures, and Chemical Accident Prevention** | | | | |
| * | * | * | * | * |

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(e) *EPA-approved non-regulatory and quasi-regulatory material.*

| Name of non-regulatory SIP revision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 15% Rate of Progress Plan. | Metropolitan Washington Ozone Nonattainment Area. | 4/16/98 | 08/05/99, 64 FR 42600 | 52.476(a). |
| * | * | * | * | * |
| 1996–1999 Rate-of-Progress plan SIP. | Washington 1-hour ozone nonattainment area. | 11/3/97, 5/25/99 | 5/13/05, 70 FR 25688 | 1999 motor vehicle emissions budgets of 128.5 tons per day (tpy) of VOC and 196.4 tpy of NOx, effective 6/13/05. |
| 1990 Base Year inventory Revisions. | Washington 1-hour ozone nonattainment area. | 9/5/03, 2/25/04 | 5/13/05, 70 FR 25688 | Effective date: 6/13/05. |
| 1999-2005 Rate-of-Progress Plan SIP Revision and the Transportation Control Measures (TCMs) in Appendix J. | Washington 1-hour ozone nonattainment area. | 9/5/03, 2/25/04 | 5/13/05, 70 FR 25688 | Only the TCMs in Appendix J of the 2/25/2004 revision, 2002 motor vehicle emissions budgets (MVEBs) of 125.2 tons per day (tpy) for VOC and 290.3 tpy of NOx, and, 2005 MVEBs of 97.4 tpy for VOC and 234.7 tpy of NOx, effective 6/13/05. |
| VMT Offset SIP Revision. | Washington 1-hour ozone nonattainment area. | 9/5/03, 2/25/04 | 5/13/05, 70 FR 25688 | Effective date: 6/13/05. |
| Contingency Measure Plan. | Washington 1-hour ozone nonattainment area. | 9/5/03, 2/25/04 | 5/13/05, 70 FR 25688 | Effective date: 6/13/05. |
| 1-hour Ozone Modeled Demonstration of Attainment and Attainment Plan. | Washington 1-hour ozone nonattainment area. | 9/5/03, 2/25/04 | 5/13/05, 70 FR 25688 | 2005 motor vehicle emissions budgets of 97.4 tons per day (tpy) for VOC and 234.7 tpy of NOx, effective 6/13/05. |
| * | * | * | * | * |

[FR Doc. 2011–3868 Filed 2–18–11; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2010–0671; FRL–9267–8]**

## Approval and Promulgation of Air Quality Implementation Plans; Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a July 29, 2010, request from the State of Illinois to exempt sources of Oxides of Nitrogen ($NO_X$) in the Illinois portions of the Chicago-Gary-Lake County, Illinois-Indiana and St. Louis, Missouri-Illinois 8-hour ozone nonattainment areas from Clean Air Act (CAA) requirements for $NO_X$ Reasonably Available Control Technology (RACT) for purposes of attaining the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard). This $NO_X$ RACT waiver is based on the most recent three years of complete, quality assured ozone monitoring data, which show attainment of the 1997 8-hour ozone standard in the subject nonattainment areas and demonstrate that additional reduction of $NO_X$ emissions in these areas would not contribute to attainment of the 1997 8-hour ozone NAAQS.

**DATES:** This final rule is effective March 24, 2011.

**ADDRESSES:** EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2010–0671. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically 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 Edward Doty, Environmental Scientist, at (312) 886–6057 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *doty.edward@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:

I. What is the background for this rule?
II. What comments did we receive on the proposed rule?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

### I. What is the background for this rule?

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts of air (ppm). EPA published a final rule designating and classifying areas under the 1997 8-hour ozone standard on April 30, 2004 (69 FR 23857). In that rulemaking, the Chicago-Gary-Lake County, Illinois-Indiana (IL–IN) and St. Louis, Missouri-Illinois (MO–IL) areas were designated as nonattainment for the 1997 8-hour ozone standard. The designations became effective on June 15, 2004.

Since the Illinois ozone nonattainment areas were classified as moderate nonattainment for ozone under subpart 2 of the CAA in the April 30, 2004, designation rulemaking, they became subject to the Oxides of Nitrogen ($NO_X$) emission control requirements of section 182(f) of the CAA. Section 182(f) requires States with areas classified as moderate nonattainment and above to adopt and implement the same level of $NO_X$ emission controls for major stationary sources as are required for major stationary sources of Volatile Organic Compounds (VOC). Major stationary VOC sources are subject to RACT requirements. Therefore, major $NO_X$ sources are also subject to RACT requirements. Section 182(f) also provides that these $NO_X$ emission control requirements do not apply to an area (outside of a designated ozone transport region) if EPA determines that additional reductions of $NO_X$ emissions would not contribute to attainment of the ozone standard. In areas where the ozone standard is attained, as demonstrated by complete, quality-assured air quality data, without the implementation of the additional section 182(f) $NO_X$ emission controls, it is clear that additional $NO_X$ emission controls required by section 182(f) would not contribute to attainment of the ozone standard since the standard has already been attained.

On July 29, 2010, the Illinois Environmental Protection Agency (Illinois EPA) submitted a request for a waiver of the $NO_X$ RACT requirements that would apply under section 182(f) of the CAA to the Illinois portions of the Chicago-Gary-Lake County, IL–IN and St. Louis, MO–IL ozone nonattainment areas.[1] Although Illinois has adopted $NO_X$ RACT rules for the ozone nonattainment areas, the 1997 8-hour ozone standard has been attained in the two ozone nonattainment area prior to the implementation of Illinois' $NO_X$ RACT rules.

On December 8, 2010 (75 FR 76332), EPA published a proposed rule reviewing Illinois' $NO_X$ control waiver request and proposing to grant this waiver under section 182(f) of the CAA. This proposed rule provides a detailed discussion of Illinois' requested $NO_X$ RACT waiver and the ozone air quality data supporting the granting of this waiver.

### II. What comments did we receive on the proposed rule?

EPA received no comments on the December 8, 2010, proposed rule.

### III. What action is EPA taking?

The 2007–2009 ozone data for the Chicago-Gary-Lake County, IL–IN and St. Louis, MO–IL 8-hour ozone nonattainment areas show attainment of the 1997 8-hour ozone standard. Based on this conclusion, we are approving Illinois' request for a waiver from the $NO_X$ RACT requirements of the CAA in the Illinois portions of the Chicago-Gary-Lake County, IL–IN and St. Louis, MO–IL 8-hour ozone nonattainment areas.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting

[1] The Illinois portion of the Chicago-Gary-Lake County, IL–IN 8-hour ozone nonattainment area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties, and portions of Grundy (Aux Sable and Goose Lake Townships) and Kendall (Oswego Township) Counties. The Illinois portion of the St. Louis, MO–IL 8-hour ozone nonattainment area includes Jersey, Madison, Monroe, and St. Clair Counties. These nonattainment areas are not part of a designated ozone transport region. *See* section 184(a) of the CAA.

Federal requirements and does not impose additional requirements beyond those imposed by State law and the CAA. For that reason, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: February 9, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart O—Illinois

■ 2. Section 52.726 is amended by adding paragraph (ii) to read as follows:

**§ 52.726 Control strategy: Ozone.**

* * * * *

(ii) *Approval.* EPA is approving a July 29, 2010, request from the State of Illinois for a waiver from the Clean Air Act requirement for Oxides of Nitrogen (NOx) Reasonably Available Control Technology (RACT) in the Illinois portions of the Chicago-Gary-Lake County, Illinois-Indiana (Cook, DuPage, Kane, Lake, McHenry, and Will Counties, and portions of Grundy (Aux Sable and Goose Lake Townships) and Kendall (Oswego Township) Counties in Illinois) and St. Louis, Missouri-Illinois (Jersey, Madison, Monroe, and St. Clair Counties in Illinois) 1997 8-hour ozone nonattainment areas.

[FR Doc. 2011–3612 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2010–0594; FRL–9268–1]**

## Approval and Promulgation of the Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Industrial Solvent Cleaning Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to Maryland's State Implementation Plan (SIP). The revision was submitted by the Maryland Department of the Environment (MDE) to establish and require reasonably available control technology (RACT) for industrial solvent cleaning operations for sources of volatile organic compounds (VOCs) covered by control techniques guidelines (CTG). This amendment reduces VOC emissions from industrial solvent cleaning operations which will help Maryland attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** *Effective Date:* This final rule is effective on March 24, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0431. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Lewis, (215) 814–2037, or by e-mail at *lewis.jacqueline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On September 29, 2010, EPA published both a notice of proposed rulemaking (NPR) (75 FR 60013) and a direct final rule (DFR) (75 FR 59973) for the State of Maryland. The NPR proposed approval of a formal SIP revision (#10–03) submitted by Maryland on April 22, 2010, to address sources of VOC emissions covered by EPA's CTG: Industrial Cleaning Solvents (see EPA 453/R–06–001, September 2006). This SIP revision adds a new regulation .09–1 under COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes). An explanation of the CAA's RACT requirements for the 1997 8-hour ozone NAAQS as they apply to Maryland and EPA's rationale for approving this SIP revision was provided in the DFR and will not be restated here. Timely adverse comments were submitted on EPA's September 29, 2010 NPR. A summary of the comment and EPA's response is provided in Section II of this document.

## II. Summary of Public Comment and EPA Response

*Comment:* The commenter opposed EPA's approval of this regulation unless Maryland specifically exempts coatings, ink, resin and adhesive manufacturing from their Industrial Solvent Cleaning rule. The commenter states that Maryland already has regulations that limit VOC emissions from these manufacturing operations and is concerned that this rule would be burdensome for these manufacturing operations. The commenter notes that COMAR 26.11.19.15 regulates coatings, ink, resin, and adhesive manufacturing operations and these operations should not be subject to the general Industrial Solvent Cleaning rule.

*Response:* As an initial matter, we note that EPA cannot disapprove the regulations merely because they are more stringent than the commenter would prefer. The CAA provides the States with great discretion in determining the controls necessary to attain and maintain the NAAQS and EPA must approve the State's choice into the SIP so long as they are consistent with the CAA. However, we note that the commenter misinterprets Maryland's regulations, which we believe address the commenter's concerns. Maryland specifically states in COMAR 26.11.19.09–1A(6)(b)(ii) that this regulation does not include cleaning operations at sources subject to any other VOC regulation in subtitle 11. Further, COMAR 26.11.19.09–1A(6)(b)(viii) states that this regulation does not include cleaning of resin, coating, ink, and adhesive mixing, molding, and application equipment. Because COMAR 26.11.19.15 applies to paints, resin and adhesive manufacturing, those cleaning operations are not subject to the regulation EPA is approving into the SIP through this action. Additionally, cleaning operations involving coatings and inks which are covered under many other sections of Subtitle 11 are not subject to the regulation EPA is approving through this action.

## III. Final Action

EPA is approving Maryland's SIP revision because it meets the requirement for establishing RACT for sources of VOC emissions covered by EPA's Industrial Cleaning Solvents CTG.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to Maryland's adoption of RACT requirements for VOC emissions from industrial cleaning solvents may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: February 8, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.19.09–1 to read as follows:

**§ 52.1070 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

| Code of Maryland administrative regulations (COMAR) citation | Title/subject | State effective date | EPA approval date | Additional explanation/ citation at 40 CFR 52.1100 |
|---|---|---|---|---|
| * | * | * | * | * |
| **26.11.19** | **Volatile Organic Compounds from Specific Processes** | | | |
| * | * | * | * | * |
| 26.11.19.09–1 | Control of VOC Emissions from Industrial Solvent Cleaning Operations Other Than Cold and Vapor Degreasing. | 4/19/10 | 2/22/11 [Insert page number where the document begins]. | New Regulation. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2011–3719 Filed 2–18–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2010–0932; FRL–9268–7]**

## Approval and Promulgation of Implementation Plans; Kansas: Prevention of Significant Deterioration; Greenhouse Gas (GHG) Permitting Authority and Tailoring Rule Revision; Withdrawal of Federal GHG Implementation Plan for Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a revision to the State Implementation Plan (SIP) for Kansas, submitted by the Kansas Department of Health and Environment (KDHE) to EPA on October 4, 2010, for parallel processing. KDHE submitted the final version of this SIP revision on December 23, 2010. The SIP revision, which incorporates updates to KDHE's air quality regulations, includes two significant changes impacting the regulation of greenhouse gas (GHG) under Kansas's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the SIP revision provides the State of Kansas with authority to issue PSD permits governing GHGs. Second, the SIP revision establishes emission thresholds for determining which new stationary sources and modification projects become subject to Kansas's PSD permitting requirements for their GHG emissions. The first provision is required under the GHG PSD SIP call, which EPA published on December 13, 2010, and which required the state of Kansas to apply its PSD program to GHG-emitting sources. The second provision is consistent with the thresholds EPA established in the Tailoring Rule, published on June 3, 2010. EPA is approving this SIP revision because this SIP revision meets the requirements of the GHG PSD SIP Call. In addition, as a result of this approval, EPA is rescinding the Federal implementation plan (FIP)—as it relates to Kansas only—that had previously been imposed on December 30, 2010.

**DATES:** *Effective Date:* This rule will be effective February 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R07–OAR–2010–0932. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, KS 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Kansas SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551–7041; *e-mail address: gonzalez.larry@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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VI. Final Action
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## I. What is the background for this final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action for the Kansas SIP. The first four of these actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which EPA issued in a single final action,[1] the "Johnson Memo Reconsideration,"[2] the "Light-Duty Vehicle Rule,"[3] and the "Tailoring Rule."[4] Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subject GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

In a separate action, the "GHG PSD SIP Call,"[5] EPA called on the State of Kansas and 12 other states with SIPs that do not provide authority to issue PSD permits governing GHGs to revise their SIPs to provide such authority. In that action—along with the "Finding of Failure to Submit SIP Revisions Required for Greenhouse Gases" and GHG PSD FIP,[6] which EPA finalized for some states, including Kansas, on December 23, 2010—EPA took steps to ensure that in the 13 states that do not have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA would have the authority to issue such permits by January 2, 2011, or soon thereafter. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, Kansas and the other 12 states have EPA-approved PSD programs that do not include GHG-emitting sources and therefore do not authorize these states to issue PSD permits to such sources. Therefore, EPA issued a finding that Kansas and the other 12 states' SIPs are substantially inadequate to comply with CAA requirements. Accordingly, and as part of the same action, EPA also issued a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. EPA also established a SIP submittal deadline. In the proposed SIP call, EPA had stated that the deadline could range from as little as three weeks after the final SIP call was signed to as long as 12 months after the final SIP call was signed, and that each affected state was authorized to indicate to EPA a deadline to which it did not object. In the final SIP call, EPA established deadlines that ranged, for the various states, from December 23, 2010 (three weeks after signature), to December 1, 2011 (12 months after signature), based, in general, on each state's preference. Kansas was one of the states for which EPA proposed and finalized the SIP Call. The state's comments regarding the proposed SIP call, submitted October 4, 2010, are included in the docket for this rulemaking. In the SIP call, EPA established a SIP submittal deadline for Kansas of December 22, 2010, in accordance with Kansas's preferences in that letter.

In addition, in the SIP call rulemaking, EPA stated certain requirements that the corrective SIP revision must meet, which are that the corrective SIP revision must—

(i) Apply the SIP PSD program to GHG-emitting sources;

(ii) Define GHGs as the same pollutant to which the Light-Duty Vehicle Rule[7] (LDVR) applies, that is, a single pollutant that is the aggregate of the group of six gases (carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide ($N_2O$), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride ($SF_6$)); and

(iii) Either limit PSD applicability to GHG-emitting sources by adopting the applicability thresholds included in the Tailoring Rule or adopt lower thresholds and show that the state has adequate personnel and funding to administer and implement those lower thresholds.

In addition, if the corrective SIP revision adopts the Tailoring Rule thresholds, then it must either adopt the $CO_2e$ metric and use short tons (as opposed to metric tons) for calculating GHG emissions in order to implement those thresholds, or assure that its approach is at least as stringent as under the Tailoring Rule, so that the state does not exclude more sources than under the Tailoring Rule.

75 FR 77713/1 to 77715/1.

In the companion "proposed GHG PSD FIP" rulemaking,[8] EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any state unable to submit a corrective SIP revision by its deadline. After Kansas did not meet its SIP submission deadline of December 22, 2010, EPA issued a finding of Kansas's failure to submit a SIP revision[9] and finalized the FIP for Kansas and six other states: Arizona, Arkansas, Florida, Idaho, Oregon, and Wyoming.[10] In this notice, EPA stated its intent to leave the GHG PSD FIP in place only as long as necessary for a state to submit and EPA to approve a SIP revision that includes PSD permitting for GHG-emitting sources.

On October 4, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, and in anticipation of the GHG PSD SIP Call rulemaking, KDHE submitted a draft revision of its air quality regulations to EPA for approval into the Kansas SIP to: (1) Provide the State of Kansas with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds and time-frames for determining which new or modified stationary sources become subject to Kansas's PSD permitting requirements for GHG emissions. Subsequently, on November 18, 2010, EPA published a proposed rulemaking to approve KDHE's October 4, 2010, SIP revision under parallel processing. 75 FR 70657. There, EPA stated that it "will not take final action on the GHG SIP Call for the state of Kansas if the state submits its

[1] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[2] "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

[3] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[4] "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule." 75 FR 31514 (June 3, 2010).

[5] "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final Rule." 75 FR 77698 (December 13, 2010).

[6] *See* footnotes 9 and 10.

[7] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[8] "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan: Proposed Rule." 75 FR 53883 (September 2, 2010).

[9] "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure to Submit State Implementation Plan Revisions Required for Greenhouse Gases." 75 FR 81874 (December 29, 2010).

[10] "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan; Final Rule." 75 FR 82246 (December 30, 2010).

final SIP revision to EPA prior to the final rulemaking for the GHG SIP Call," indicating that the proposed SIP revision would be sufficient to address the inadequacies that serve as the basis for the SIP Call, and later the final GHG PSD FIP. 75 FR at 70663.

EPA's November 18, 2010, proposed approval was contingent upon the State of Kansas providing a final SIP revision that was substantially the same as the draft revision proposed for approval. *Id.* After EPA issued a finding that Kansas did not submit a SIP revision by its December 22, 2010, deadline, and established a FIP for Kansas in actions signed on December 23, 2010, Kansas submitted its final SIP revision on December 23, 2010. This SIP revision is the same as the proposed revision KDHE submitted on October 4, 2010, for parallel processing. EPA is approving the final SIP revision in today's action and is simultaneously withdrawing the FIP as it relates to the State of Kansas.

## II. Analysis of Kansas's SIP Revision

Section 110(k)(3) of the CAA provides that EPA shall approve a SIP revision as a whole if it meets all of the applicable requirements of the CAA. Kansas received a SIP call because its PSD program does not apply to GHGs, and as a result, Kansas is required to submit a SIP revision that applies PSD to GHGs and does so either at the Tailoring Rule thresholds or at lower thresholds, and, if the latter, then Kansas is required to demonstrate that it has adequate resources for implementation.

Kansas has submitted a SIP revision that provides this authority. Kansas's SIP revision updates the incorporation by reference to EPA's definition in 40 CFR 52.21(b)(49) for "subject to regulation" to explicitly include GHG as a regulated NSR pollutant under the CAA. In addition, the Kansas rules incorporate the same thresholds and phase-in schedule as the Tailoring Rule and they adopt the carbon dioxide equivalent ($CO_2e$) metric and use of short tons for determining the thresholds.

EPA has determined that this change to Kansas's regulation meets the requirements of the SIP call. Thus, this change is consistent with the CAA and its implementing regulations regarding GHG. The changes included in this submittal are the same as EPA's Tailoring Rule, and therefore comply with the requirements of the SIP call.

## III. What is EPA's response to comments received on the proposed action?

EPA received a single set of comments on the November 18, 2010, proposed rulemaking to approve revisions to Kansas's SIP. These comments, provided by the Air Permitting Forum (hereinafter referred to as "the Commenter"), raised concerns with regard to EPA's November 18, 2010, proposed action. A full set of these comments is provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Generally, the adverse comments fall into five categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter characterizes EPA's interpretation of the CAA by saying that Kansas will face a construction ban absent this SIP revision and asserts that this interpretation is incorrect. Furthermore, in a footnote, the Commenter expresses that EPA's process of revising the state's SIP is inconsistent with CAA section 110 because it does not provide for notice and comment on the final state action. Third, the Commenter expresses concerns regarding EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action is "inapplicable to this action and, if applicable, is illegal." Fourth, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: "If EPA proceeds with this action, it should make clear that any incorporation by reference conducted by Kansas would rest on the continued existence and validity of the federal regulations on which it [sic] the incorporation is based." EPA's response to these five categories of comments is provided below.

*Comment 1:* The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter states: "[N]o area in the State of Kansas has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting." The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states that "EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Kansas to rescind that portion of its rules that would allow GHGs to trigger PSD."

*Response 1:* EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. Accordingly, these comments are not relevant to this rulemaking. In addition, EPA has explained in detail, in recent rulemakings concerning GHG PSD requirements, its reasons for disagreeing with these comments.

In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a "major stationary source" was one that emitted "any air pollutant subject to regulation under the Act" at or above the specified numerical thresholds; and defined a "major modification," in general, as a physical or operational change that increased emissions of "any pollutant subject to regulation under the Act" by more than an amount that EPA variously termed as *de minimis* or significant. In addition, in EPA's NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of "regulated NSR pollutant" (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)); noted that EPA added this term based on a request from a commenter to "clarify which pollutants are covered under the PSD program"; and explained that in addition to criteria pollutants for which a NAAQS has been established, "[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant." *Id.* at 67 FR 80240 and 67 FR 80264. Among other things, the definition of "regulated NSR pollutant" includes "[a]ny pollutant that otherwise is subject to regulation under the Act." *See* 40 CFR 52.21(b)(50)(d)(iv); see also 40 CFR 51.166(a)(49)(iv).

In any event, EPA disagrees with the Commenter's underlying premise that PSD requirements are not triggered for GHGs when GHGs become subject to regulation as of January 2, 2011. As just noted, this has been well-established and discussed in connection with prior EPA actions, including, most recently, the Johnson Memo Reconsideration and the Tailoring Rule. In addition, EPA's November 18, 2010, proposed

rulemaking notice provides the general basis for the Agency's rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 18, 2010, notice also refers the reader to the preamble to the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS and concluded that such an interpretation of the Act would contravene Congress's unambiguous intent. *See* 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response to Comments document ("Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments"), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules ("EPA's Response to Motions for Stay," *Coalition for Responsible Regulation* v. *EPA,* D.C. Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action.

*Comment 2:* In its letter, the Commenter mentions that it provided comments on EPA's GHG PSD SIP Call and GHG PSD FIP rulemakings expressing that "EPA's interpretation of the Act to impose a construction ban based on Section 165(a) is incorrect." Further, the Commenter states: "No statutory language addressing implementation plan requirements can be construed to produce self-executing changes to SIPs or FIPs approved or promulgated under section 110 of the Act unless Congress enacts statutory provisions explicitly amending those SIPs or FIPs to incorporate the new requirements, thereby obviating the need for rulemaking under section 110(a) or (c) of the Act to effect revisions to those implementation plans." The Commenter also contends that there is no support for EPA's "permit moratorium" interpretation because the Commenter believes CAA section 165(a) is not self-executing, and approved SIPs and promulgated FIPs can only be changed through section 110 rulemakings to revise those plans. In support of its position, the Commenter cites to *United States* v. *Cinergy Corp.,* No. 09–3344 (7th Cir. October 12, 2010). The Commenter further states that Kansas would be able to issue PSD permits after January 2, 2011, even without GHG limits, because its current SIP is approved and it would be acting consistently with that approved SIP. Further, the Commenter states that "EPA's rule contemplated that states have 3 years to revise their SIPs when an NSR-related change occurs and, assuming without conceding that EPA could impose PSD on GHGs, EPA should have followed that procedure in this case." Finally, the Commenter states that EPA's notice-and-comment process associated with the proposed SIP revision is inconsistent with section 110 because it does not provide for federal notice and comment on the final state action.

*Response 2:* EPA established the requirement that Kansas submit a corrective SIP revision in the SIP call rulemaking. As a result, the only issues relevant to this rulemaking concern whether Kansas's SIP submission meets the requirements of the SIP call and therefore should be approved. Issues concerning the validity of the SIP call, including the comments raised by the commenter, may have been relevant for the SIP call rulemaking but are not relevant for this rulemaking. Accordingly, these comments are not relevant for this rulemaking. EPA notes that the Agency provided an extensive response in the final GHG PSD SIP Call rulemaking to comments nearly identical to comments received on this rulemaking, 75 FR 77698. EPA incorporates by reference those responses, as contained in the GHG PSD SIP Call preamble and the Tailoring Rule Response to Comment document, into this rulemaking. The following gives examples of references in the GHG PSD SIP Call rulemaking preamble and record in which EPA responded to these, or substantially similar, comments:

With respect to the comments that (i) "EPA's interpretation of the Act to impose a construction ban based on Section 165(a) is incorrect"; (ii) "No statutory language addressing implementation plan requirements can be construed to produce self-executing changes to SIPs or FIPs approved or promulgated under section 110 of the Act unless Congress enacts statutory provisions explicitly amending those SIPs or FIPs to incorporate new requirements, thereby obviating the need for rulemaking under section 110(a) or (c) of the Act to effect revisions to those implementation plans"; and (iii) there is no support for EPA's "permit moratorium" interpretation because (in the Commenter's opinion) CAA section 165(a) is not self-executing and approved SIPs and promulgated FIPs can only be changed through section 110 rulemakings to revise those plans, see, for example, 75 FR 77705 (footnote 16), and 75 FR 77710–77711. EPA notes further that the requirement of CAA section 165(a)(1) that stationary sources that emit the requisite quantity of pollutants subject to regulation obtain a pre-construction permit is mandated by the CAA and is automatically updated to apply to any pollutant newly subject to regulation; thus, contrary to the Commenter's statement, EPA is not construing the CAA to "produce self-executing changes to SIPs * * *." In addition, today's action does not create what the Commenter calls a "permit moratorium"; in fact, today's rule continues a permitting authority for GHG-emitting sources for Kansas that had already been established as of the GHG PSD permitting requirements effective date.[11] Further, no "self-executing changes" to Kansas's SIP are made in today's action; EPA is simply approving Kansas's SIP revision, submitted December 23, 2010, according to the proper process.

With respect to the comment that a decision by Judge Posner in *United States* v. *Cinergy Corp.,* No. 09–3344 (7th Cir. October 12, 2010), directly addresses this issue, *see* 75 FR 77705–77706, footnote 16.

With respect to the comment that Kansas would be able to issue PSD permits after January 2, 2011, even without GHG limits, because its current SIP is approved and it would be acting consistent with that approved SIP, EPA notes that it is true that as of January 2, 2011, Kansas could issue such a permit to cover the non-GHG pollutants emitted by a source that is major for a pollutant other than GHGs. If the source emits GHGs in at least the amount specified in the Tailoring Rule, however, then the source would also need a PSD permit for its GHG emissions. Kansas already has authority to issue GHG permits by virtue of the FIP delegation described in footnote 10.

With respect to the comment that "EPA's rule contemplated that states have 3 years to revise their SIPs when an NSR-related change occurs and, assuming without conceding that EPA could impose PSD on GHGs, EPA should have followed that procedure in this case," see 75 FR 77707–77708. In any event, the proper length of time EPA must provide states to act is also irrelevant to this rule because this action deals with a SIP revision actually

[11] For the period of January 2, 2011, to the effective date of this final action, EPA and KDHE have entered into a delegation agreement which delegated federal authority (established by the GHG PSD FIP for Kansas, as described above) to issue and modify PSD permits for sources of GHGs in Kansas to KDHE.

submitted by Kansas to EPA for approval. In addition, EPA has also addressed the issue of whether a construction ban applies in states with approved PSD SIPs that do not cover GHGs in its Response in Opposition to Petitioner's Emergency Motion for a Stay Pending Review, *Texas* v. *EPA,* No. 10–1425 (DC Cir. filed January 6, 2011), and in its Response in Opposition to Motion of National Association of Manufacturers et al. to File a Response as Amicus Curiae in Support of Petitioners' Stay Motion (also filed in the *Texas* case, on January 7, 2011).

EPA disagrees with the Commenter's statement that EPA's proposed action on Kansas's draft rules is inconsistent with CAA section 110 because it does not provide for federal notice and comment on the final state action. EPA's proposed approval was based on the draft form of the State of Kansas's regulations on which the state itself solicited public comment. As explained in our proposal at 75 FR 70657, EPA utilized a "parallel processing" procedure for this SIP revision. Under this procedure, EPA proposes rulemaking action concurrently with the state's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, appendix V, 2.3). EPA reviews the proposed SIP submittal in the same manner in which it reviews a final, adopted regulation, even though the regulation is not yet adopted in final form by the state. In doing so, EPA evaluates the draft regulation against the same approvability criteria as any other SIP submittal. If substantial changes are made between the draft SIP revision upon which EPA solicits comment and the final SIP revision submitted by the state, EPA reissues the final SIP revision for a new round of public comment. Thus, using the "parallel processing" procedure does not avoid any statutory requirements, and has not done so here. The proposal published November 18, 2010, gave the public the appropriate opportunity to comment on the substance of the October 4, 2010, SIP revision for which EPA is today issuing a final approval. In fact, the revision adopted by Kansas is identical to the draft regulation which EPA described in the proposal. Therefore, the Commenter and others had the opportunity to comment on the exact regulatory language which was finally adopted by Kansas and is approved in today's action.

*Comment 3:* The Commenter expresses concerns regarding the legality of narrowing prior SIP approvals if states cannot interpret their regulations to include the Tailoring Rule thresholds within the phrase "subject to regulation."

*Response 3:* While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the validity of the narrowing approach is irrelevant to the action that EPA is today taking for Kansas's December 23, 2010, SIP revision. EPA did not propose to narrow its approval of Kansas's SIP as part of this action, and in today's final action, EPA is acting to approve a SIP revision submitted by Kansas and is not otherwise narrowing its approval of prior submitted and approved provisions in the Kansas SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

*Comment 4:* The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory requirements and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Kansas, much less nationwide.

*Response 4:* EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Kansas's October 4, 2010, proposed SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable, because it merely approves a state rule implementing a federal standard and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled "*VII. Comments on Statutory and Executive Order Reviews,*" 75 FR 31601–31603, and "*VI. What are the economic impacts of the final rule?,*" 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, GHGs are already being regulated nationally, PSD permitting for GHG emissions by Kansas is already specifically authorized under delegation of the existing FIP, and today's action simply approves existing state laws that accomplish the same thing as the FIP.

*Comment 5:* The Commenter states that "[i]f EPA proceeds with this action, it should make clear that any incorporation by reference conducted by Kansas would rest on the continued existence and validity of the federal regulations on which the incorporation is based." Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the DC Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that "any vacatur of those regulations should also be effective to vacate the SIP provision itself since the SIP would be referencing a regulation that no longer is valid or exists."

*Response 5:* EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United

States Court of Appeals for the DC Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc.* v. *EPA,* Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (DC Cir. December 10, 2010) (order denying stay motions).

**IV. What is the effect of this final action?**

Final approval of Kansas's December 23, 2010, SIP revision will make Kansas's SIP adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for the GHG PSD FIP for Kansas and the delegation agreement between EPA and KDHE. The FIP is also being withdrawn today. Additionally, final approval of Kansas's SIP revision will incorporate into the SIP the GHG emission thresholds for PSD applicability that were set forth in EPA's Tailoring Rule and included in the GHG PSD FIP for Kansas, ensuring that smaller GHG sources emitting below these thresholds will continue to not be subject to permitting requirements. Pursuant to section 110 of the CAA, EPA is approving the changes made in Kansas's December 23, 2010, proposed SIP revision into the state's SIP. However, as we noted in the proposed approval of the Kansas submittal, 75 FR 70663, this action only addresses the December 23, 2010, revisions relating to the regulation of GHGs under the state's PSD program. We intend to act on the state's revisions to its Title V program separately, as well as Kansas's separate submittal of changes to the applicability of the PSD program to contain ethanol production facilities (the "Ethanol Rule"). Furthermore, as Kansas has not adopted EPA's "Fugitive Emissions Rule," today's action does not address the Fugitive Emissions Rule.

The changes to Kansas's SIP-approved PSD program that EPA is approving today have been reviewed and determined to be consistent with the Tailoring Rule. Furthermore, EPA has determined that the December 23, 2010, revision to Kansas's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, at 75 FR 31561. As a result of EPA's approval today, the deficiency in Kansas's SIP is corrected and EPA no longer has the authority for the FIP for Kansas, and so EPA is also withdrawing the FIP for Kansas. 75 FR 82246 (December 30, 2010).

**V. When is this action effective?**

The effective date of today's final action is the date that this notice is published in the **Federal Register.** In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on the date of publication. The effective date upon publication of this notice for this action is authorized under 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any substantively new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule withdraws the FIP, replaces the current regulatory requirements under the FIP with the same requirements under the SIP, shifts current permitting authority for GHGs to Kansas under its SIP instead of EPA under the FIP, and negates the need for the delegation agreement that delegated authority from EPA to KDHE to issue and modify PSD permits for sources of GHGs in Kansas. With this rule KDHE becomes the permitting authority for all pollutants (including GHGs) under the SIP-approved program. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective immediately upon publication.

**VI. Final Action**

EPA is taking final action to approve the state of Kansas's December 23, 2010, SIP revision, which incorporates changes into the Kansas Administrative Regulations (28–19–200a and 28–19–350). The SIP revision Kansas submitted on December 23, 2010, (1) provides the state with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting stationary sources in accordance with EPA's Tailoring Rule. EPA has made the determination that the December 23, 2010, SIP revision is approvable because it is in accordance with the CAA and EPA regulations, including regulations pertaining to PSD permitting for GHGs.

Today's action also withdraws the FIP that was previously imposed in Kansas, and which this SIP revision displaces. Accordingly, EPA is rescinding the entirety of 40 CFR 52.37(b)(5) (applying the FIP to Kansas). EPA is taking this FIP withdrawal action as a final rule without providing an additional opportunity for public comment because EPA finds that the Administrative Procedure Act (APA) good cause exemption applies here. Section 553 of the APA, 5 U.S.C. 553(b)(B), provides that when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to public interest, the Agency may issue a rule without providing notice and an opportunity to comment.

EPA has determined that it is unnecessary or contrary to the public interest to provide an additional opportunity for public comment on this action because the withdrawal of the FIP for Kansas is a necessary and simply ministerial act. Once EPA fully approves the SIP for Kansas as meeting the requirements of the GHG SIP call, and that approval is effective, EPA no longer has the authority for the GHG PSD FIP in Kansas. Because the SIP approval removes EPA's authority for the FIP, EPA believes it has no option but to withdraw the FIP. Therefore, EPA is taking this withdrawal action to remove the regulatory text that applies the GHG PSD FIP requirements to sources in Kansas, and that action is ministerial. If EPA were to decide to reconsider or reverse the SIP approval action, it would take any appropriate action with regard to the FIP at that time. For these reasons, it would serve no useful purpose to provide an additional opportunity for public comment on this issue.

EPA also finds that it would be contrary to the public interest to delay issuing this rule in order to offer additional comment opportunities. Delaying the withdrawal of the FIP would leave the FIP in place even though the SIP would now also be in place, which would result in duplicative permitting authority and, as a result of that, confusion to the public. Promulgation of this rule serves to clarify that sources initially covered by the FIP in Kansas are now covered only by the requirements of the Kansas SIP.

Further, EPA previously provided public notice that the withdrawal of a GHG PSD FIP for any state to which the FIP applied would be done at the same time as the approval of a GHG SIP for that state. *See* 75 FR at 82251. The public had opportunity to provide comment on this procedure during the rulemaking process for the GHG PSD FIP rule referenced above (footnotes 7 and 9). The rulemaking process for Kansas provided the public with ample opportunity to comment on the substantive issues related to the SIP approval. To provide an additional opportunity to comment on the FIP withdrawal action for Kansas, which cannot alter or affect the terms of the

SIP approval, would serve no useful purpose and is thus unnecessary.

For these reasons, EPA hereby finds for good cause, pursuant to section 553 of the APA, that it would be unnecessary and contrary to the public interest for EPA to offer an additional opportunity for public comment and a public hearing on this rule. Therefore, pursuant to section 307(d)(1) the requirements of 307(d), including the requirement for a public hearing, do not apply to this action.

## VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. In addition, withdrawal of the GHG PSD FIP as a result of this approval of state law merely clarifies that the federal plan no longer applies. For those reasons, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2011 Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: February 15, 2011.

**Lisa P. Jackson,**

*Administrator.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart A—General Provisions

### § 52.37 [Amended]

■ 2. Section 52.37 is amended by removing and reserving paragraph (b)(5).

## Subpart R—Kansas

■ 3. In § 52.870 (c) the table is amended by revising the entry for "K.A.R. 28–19–350" to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

| Kansas citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| **Construction Permits and Approvals** | | | | |
| 28–19–350 ..... | Prevention of Significant Deterioration (PSD) of Air Quality. | 01/02/2011 | 2/22/11 [Insert citation of publication]. | Approval does not include Kansas's revisions to the Ethanol Rule (72 FR 24060, May 1, 2007) and to the Fugitive Emissions Rule (73 FR 77882, December 19, 2008). |
| * | * | * | * | * |

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[FR Doc. 2011–3858 Filed 2–18–11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 302

**[EPA–HQ–SFUND–2010–1068; FRL–9268–8]**

### Designation, Reportable Quantities, and Notification; Notification Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA is issuing a technical amendment to correct telephone and facsimile numbers used to immediately notify the National Response Center. EPA issued a final rule in the **Federal Register** on April 4, 1985, that provided telephone numbers for any person in charge of a vessel or an offshore or an onshore facility to use as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) for the immediate notification to the National Response Center when there is a release of a hazardous substance from a vessel or facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period. On July 9, 2002, EPA issued another final rule in the **Federal Register** that provided an additional telephone number, a facsimile number, and a telex number for the National Response Center. Recently, changes were made to these numbers by the National Response Center that is operated by the U.S. Coast Guard. This document is being issued to delete one of the telephone numbers, the facsimile number, and the telex number, and to provide a new facsimile number.

**DATES:** This final rule is effective on February 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2010–1068. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

**FOR FURTHER INFORMATION CONTACT:** Lynn Beasley, Regulation and Policy Development Division, Office of Emergency Management (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–1965; *fax number:* (202) 564–2625; *e-mail address: beasley.lynn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

| Type of entity | Examples of affected entities |
|---|---|
| Federal Agencies | National Response Center and any Federal agency that may release or respond to releases of hazardous substances. |
| State and Local Governments | State Emergency Response Commissions, and Local Emergency Planning Committees. |
| Responsible Parties | Those entities responsible for the release of a hazardous substance from a vessel or facility. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. How can I get copies of this document and other related information?*

The current information is as follows:

- Docket ID No. EPA–HQ–SFUND–2010–1068.
- Federal eRulemaking Portal: *http://www.regulations.gov.*

## II. What does this correction do?

This technical amendment is a correction that is being issued to delete one of the telephone numbers, the facsimile number, and the telex number, and to provide a new facsimile number for the person in charge of a vessel or an offshore or an onshore facility to use to contact the National Response Center (NRC). The NRC is operated by the U.S. Coast Guard.

On April 4, 1985, (50 FR 13456) EPA issued a final rule in the **Federal Register** that provided telephone numbers for any person in charge of a vessel or an offshore or an onshore facility to use as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) for the immediate notification to the NRC when there is a release of a hazardous substance from a vessel or facility in a quantity equal to or exceeding the reportable quantity in any 24-hour period (*see* 40 CFR 302.6(a)). On July 9, 2002, EPA issued another final rule in the **Federal Register** that provided an additional telephone number, a facsimile number, and a telex number for the NRC. Recently, changes were made to these numbers.

## III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because EPA is merely correcting information that has become out of date since the previously published final rule. The contact information for the NRC listed in 40 CFR 302.6 is no longer correct. Because the NRC receives notifications of hazardous substance release information, it is important that the public has the correct information to make such notifications. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

**IV. Do any of the statutory and Executive Order reviews apply to this action?**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to OMB review. Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

*A. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of February 22, 2011. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 302**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 11, 2011.

**Barry Breen,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 1. The authority citation for part 302 continues to read as follows:

**Authority:** 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

■ 2. Section 302.6 is amended by revising paragraph (a) to read as follows:

**§ 302.6 Notification requirements.**

(a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he or she has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center (1–800–424–8802; in Washington, DC 202–267–2675; the facsimile number is 202–267–1322).

* * * * *

[FR Doc. 2011–3872 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 64

**[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8169]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**DATES:** *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance

with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region III** | | | | |
| Maryland: | | | | |
| Crisfield, City of, Somerset County. | 240062 | April 28, 1975, Emerg; June 15, 1981, Reg; March 3, 2011, Susp. | March 3, 2011 .. | March 3, 2011. |
| Princess Anne, Town of, Somerset County. | 240063 | January 28, 1974, Emerg; April 20, 1979, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Somerset County, Unincorporated Areas. | 240061 | May 8, 1975, Emerg; June 15, 1981, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| **Region IV** | | | | |
| South Carolina: | | | | |
| Abbeville, City of, Abbeville County. | 450001 | October 9, 1975, Emerg; June 4, 1980, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Edgefield, Town of, Edgefield County. | 450074 | August 14, 1995, Emerg; February 1, 2002, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Edgefield County, Unincorporated Areas. | 450229 | July 12, 1991, Emerg; April 1, 1993, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Johnston, Town of, Edgefield County. | 450266 | February 4, 2002, Emerg; March 3, 2011, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| **Region V** | | | | |
| Illinois: | | | | |
| Freeport, City of, Stephenson County. | 170640 | January 28, 1973, Emerg; May 16, 1977, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Orangeville, Village of, Stephenson County. | 170641 | October 25, 1996, Emerg; March 3, 2011, Reg; March 3, 2011, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Winslow, Village of, Stephenson County. | 170644 | June 30, 1975, Emerg; November 17, 1982, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Ohio: | | | | |
| Highland, Village of, Highland County. | 390268 | October 20, 1975, Emerg; September 29, 1978, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Hillsboro, City of, Highland County. | 390269 | July 9, 1975, Emerg; September 4, 1986, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Leesburg, Village of, Highland County. | 390270 | December 6, 1993, Emerg; March 3, 2011, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Lynchburg, Village of, Highland County. | 390271 | April 9, 1976, Emerg; September 6, 1989, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| **Region VI** | | | | |
| Arkansas: | | | | |
| Donaldson, City of, Hot Spring County. | 050596 | December 11, 1990, Emerg; November 1, 1992, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Hot Spring County, Unincorporated Areas. | 050437 | June 6, 1990, Emerg; November 1, 1992, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Malvern, City of, Hot Spring County. | 050088 | May 1, 1974, Emerg; March 2, 1983, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Louisiana: | | | | |
| Anacoco, Village of, Vernon Parish. | 220046 | N/A, Emerg; September 2, 2009, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Hornbeck, Village of, Vernon Parish. | 220332 | May 8, 2001, Emerg; June 1, 2005, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Leesville, City of, Vernon Parish. | 220229 | October 17, 1974, Emerg; January 17, 1986, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| New Llano, Village of, Vernon Parish. | 220340 | May 12, 1983, Emerg; July 18, 1985, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Rosepine, Village of, Vernon Parish. | 220346 | March 5, 1976, Emerg; October 19, 1982, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Vernon Parish, Unincorporated Areas. | 220228 | July 20, 1984, Emerg; March 1, 1987, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Texas: | | | | |
| Kerr County, Unincorporated Areas. | 480419 | January 21, 1975, Emerg; May 1, 1979, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Kerrville, City of, Kerr County. | 480420 | February 5, 1975, Emerg; September 29, 1978, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| **Region VII** | | | | |
| Missouri: | | | | |
| California, City of, Moniteau County. | 290238 | December 16, 1975, Emerg; August 24, 1984, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Lupus, City of, Moniteau County. | 290239 | March 13, 1985, Emerg; January 3, 1986, Reg; March 3, 2011, Susp. | .....do ..... | Do. |
| Nebraska: | | | | |
| Scribner, City of, Dodge County. | 310071 | May 30, 1975, Emerg; November 1, 1979, Reg; March 3, 2011, Susp. | .....do ..... | Do. |

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 11, 2011.

**Edward L. Connor,**

*Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2011–3864 Filed 2–18–11; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket ID FEMA–2011–0002]**

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps

are available for inspection as indicated in the table below.

**ADDRESSES:** The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.11 [Amended]**

■ 2. The tables published under the authority of § 67.11 are amended as follows:

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|
| **Logan County, Arkansas, and Incorporated Areas<br>Docket No.: FEMA–B–1091** | | | |
| Arkansas River | Just upstream of State Highway 109 | +351 | Town of Morrison Bluff. |
| Booneville Creek | Approximately 0.75 mile upstream of the confluence with the Petit Jean River. | +443 | City of Booneville. |
| Booneville Creek Tributary No. 1. | Just upstream of the Logan County southeast boundary | +446 | City of Booneville. |
| Cane Creek | Flooding effects near 5th Street and Tributary of Cane Creek. | +352 | Town of Scranton. |
| | Flooding effects just southeast of 5th and Cherry Streets, near the Town of Scranton's southeast boundary. | +355 | |
| Petit Jean River | Just upstream of the Logan County southeast boundary | +443 | City of Booneville. |
| Short Mountain Creek Tributary | Just upstream of the confluence with Short Mountain Creek. | +375 | Unincorporated Areas of Logan County. |
| | Just upstream of Cherry Street | +425 | |
| | Approximately 1,800 feet upstream of Cherry Street | +432 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Booneville**
Maps are available for inspection at 497 East Main Street, Suite A, Booneville, AR 72927.

**Town of Morrison Bluff**
Maps are available for inspection at 22189 North State Highway 109, Scranton, AR 72863.

**Town of Scranton**
Maps are available for inspection at 203 Park Avenue, Scranton, AR 72863.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|
| **Unincorporated Areas of Logan County:** | | | |
| Maps are available for inspection at the OEM Training Center, 205 East Maple Street, Paris, AR 72855. | | | |
| **Mendocino County, California, and Incorporated Areas**<br>**Docket No.: FEMA–B–1089** | | | |
| Ackerman Creek | At the upstream side of North State Street | +626 | Pinoleville Indian Reservation, Unincorporated Areas of Mendocino County. |
| | Approximately 0.7 mile upstream of U.S. Route 101 southbound lanes. | +643 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Pinoleville Indian Reservation**

Maps are available for inspection at 500 Pinoleville Drive, Suite B, Ukiah, CA 95482.

**Unincorporated Areas of Mendocino County**

Maps are available for inspection at 890 North Bush Street, Ukiah, CA 95482.

| | | | |
|---|---|---|---|
| **Adams County, Illinois, and Incorporated Areas**<br>**Docket No.: FEMA–B–1104** | | | |
| Cedar Creek | At the confluence with the Mississippi River | +487 | City of Quincy, Unincorporated Areas of Adams County. |
| | Approximately 1,000 feet downstream of U.S. Route 24 | +487 | |
| Curtis Creek | At the confluence with the Mississippi River | +486 | Unincorporated Areas of Adams County. |
| | Approximately 150 feet upstream of State Route 57 | +486 | |
| Mill Creek | At the confluence with the Mississippi River | +481 | Unincorporated Areas of Adams County. |
| | Approximately 1,850 feet upstream of State Route 57 | +481 | |
| Mississippi River | Approximately 2.9 miles upstream of U.S. Route 36 (River Mile 312.4). | +479 | City of Quincy, Unincorporated Areas of Adams County. |
| | Approximately 4.1 miles upstream of Lock and Dam No. 20 (River Mile 347.4). | +494 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Quincy**

Maps are available for inspection at City Hall, 730 Maine Street, Quincy, IL 62301.

**Unincorporated Areas of Adams County**

Maps are available for inspection at the Adams County Highway Department, 101 North 54th Street, Quincy, IL 62305.

| | | | |
|---|---|---|---|
| **Crawford County, Illinois, and Incorporated** Areas<br>**Docket No.: FEMA–B–1089** | | | |
| Mill Creek | At 1800th Avenue | +452 | Unincorporated Areas of Crawford County. |
| | Approximately 975 feet upstream of North Street | +452 | |
| Mill Creek Tributary | Approximately 800 feet upstream of the confluence with Mill Creek. | +458 | Unincorporated Areas of Crawford County, Village of Hutsonville. |
| | Approximately 2,300 feet upstream of the confluence with Mill Creek. | +479 | |
| Sugar Creek | At Franklin Road | +442 | Village of Palestine. |
| | Approximately 2,370 feet upstream of County Route 5 | +444 | |

* National Geodetic Vertical Datum.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|

+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Unincorporated Areas of Crawford County**

Maps are available for inspection at the Crawford County Courthouse, 100 Douglas Street, Robinson, IL 62454.

**Village of Hutsonville**

Maps are available for inspection at the Village Hall, 113 South Main Street, Hutsonville, IL 62433.

**Village of Palestine**

Maps are available for inspection at the Village Hall, 301 South Main Street, Palestine, IL 62451.

**Henry County, Illinois, and Incorporated Areas**
**Docket No.: FEMA–B–1122**

| | | | |
|---|---|---|---|
| Geneseo Creek | Approximately 0.13 mile downstream of Elk Street | +615 | City of Geneseo, Unincorporated Areas of Henry County. |
| | Approximately 0.59 mile upstream of I–80 | +642 | |
| Rock River | Approximately 0.75 mile downstream of Hurd Road (in Whiteside County). | +584 | Unincorporated Areas of Henry County. |
| | Approximately 2.5 miles upstream of Hurd Road (in Whiteside County). | +585 | |
| Rock River | Approximately 1.04 miles upstream of I–80 | +577 | Village of Cleveland. |
| | Approximately 1.63 miles upstream of I–80 | +578 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Geneseo**

Maps are available for inspection at City Hall, 101 South State Street, Geneseo, IL 61254.

**Unincorporated Areas of Henry County**

Maps are available for inspection at the Henry County Courthouse, 307 West Center Street, Cambridge, IL 61238.

**Village of Cleveland**

Maps are available for inspection at the Village Hall, 408 Jackson Street, Cleveland, IL 61241.

**Pike County, Illinois, and Incorporated Areas**
**Docket No.: FEMA–B–1115**

| | | | |
|---|---|---|---|
| Hardy Creek | Approximately 0.67 mile upstream of East Street | +452 | Unincorporated Areas of Pike County. |
| | Approximately 0.74 mile upstream of East Street | +452 | |
| Illinois River | Approximately 1,660 feet downstream of Bee Creek Road (River Mile 38.9). | +441 | Unincorporated Areas of Pike County. |
| | Approximately 0.59 mile downstream of County Route 176 North (River Mile 40.2). | +441 | |
| | Approximately 1.56 miles upstream of County Route 2400 North extended (River Mile 66.6). | +447 | |
| | Approximately 0.54 mile upstream of IL–104 (River Mile 71.9). | +448 | |
| Kiser Creek Diversion Ditch | Approximately 1,795 feet downstream of IL–96 | +478 | Town of New Canton. |
| | Approximately 1,848 feet upstream of IL–96 | +486 | |
| Mississippi River | Approximately 0.65 mile downstream of U.S. Route 54 (River Mile 282.5). | +463 | Unincorporated Areas of Pike County. |
| | Approximately 700 feet upstream of 1st Avenue extended (River Mile 312). | +479 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Town of New Canton**

Maps are available for inspection at the Sny Island Drainage District, 490 North Main Street, New Canton, IL 62356.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|
| **Unincorporated Areas of Pike County** | | | |
| Maps are available for inspection at the Pike County Courthouse, 100 East Washington Street, Pittsfield, IL 62363. | | | |
| **Clayton County, Iowa, and Incorporated Areas**<br>**Docket No.: FEMA–B–1075** | | | |
| Mississippi River | At the Dubuque County boundary | +616 | City of Clayton, City of Guttenberg, City of Marquette, City of McGregor, City of North Buena Vista, Unincorporated Areas of Clayton County. |
| | At the Allamakee County boundary, approximately 2.5 miles upstream of the Marquette-Joliet U.S. Route 18 Bridge. | +629 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Clayton**
Maps are available for inspection at 302 Main Street, Clayton, IA 52049.

**City of Guttenberg**
Maps are available for inspection at 502 South 1st Street, Guttenberg, IA 52052.

**City of Marquette**
Maps are available for inspection at 88 North Street, Marquette, IA 52158.

**City of McGregor**
Maps are available for inspection at 416 Main Street, McGregor, IA 52157.

**City of North Buena Vista**
Maps are available for inspection at 502 Walnut Street, North Buena Vista, IA 52066.

**Unincorporated Areas of Clayton County**
Maps are available for inspection at 100 Sandpit Road, Elkader, IA 52043.

| | | | |
|---|---|---|---|
| **Carter County, Kentucky, and Incorporated Areas**<br>**Docket No.: FEMA–B–1112** | | | |
| Barrett Creek (backwater effects from Little Sandy River). | From the confluence with the Little Sandy River to approximately 0.5 mile upstream of Eagle Drive. | +581 | Unincorporated Areas of Carter County. |
| Bens Run (backwater effects from Tygarts Creek). | From the confluence with Tygarts Creek to approximately 0.6 mile upstream of the confluence with Tygarts Creek. | +752 | Unincorporated Areas of Carter County. |
| Big Sinking Creek (backwater effects from Little Sandy River). | From the confluence with the Little Sandy River to approximately 0.5 mile upstream of the confluence with the Little Sandy River. | +610 | Unincorporated Areas of Carter County. |
| Davy Run (backwater effects from Little Fork Little Sandy River). | From the confluence with the Little Fork Little Sandy River to approximately 0.6 mile upstream of the confluence with the Little Fork Little Sandy River. | +613 | Unincorporated Areas of Carter County. |
| Dry Branch (backwater effects from Tygarts Creek). | From the confluence with Tygarts Creek to just downstream of U.S. Route 60. | +804 | Unincorporated Areas of Carter County. |
| Fourmile Creek (backwater effects from Little Sandy River). | From the confluence with the Little Sandy River to approximately 400 feet upstream of Glory Lane. | +604 | Unincorporated Areas of Carter County. |
| Huff Run (backwater effects from Little Fork Little Sandy River). | From the confluence with the Little Fork Little Sandy River to approximately 0.7 mile upstream of the confluence with the Little Fork Little Sandy River. | +616 | Unincorporated Areas of Carter County. |
| Johns Run (backwater effects from Little Fork Little Sandy River). | From the confluence with the Little Fork Little Sandy River to approximately 0.6 mile upstream of the confluence with the Little Fork Little Sandy River. | +623 | Unincorporated Areas of Carter County. |
| Lost Creek (backwater effects from Dry Fork). | From the confluence with Dry Fork to approximately 0.5 mile downstream of Eddie Dean Road. | +632 | Unincorporated Areas of Carter County. |
| Straight Creek (backwater effects from Little Fork Little Sandy River). | From the confluence with the Little Fork Little Sandy River to approximately 1,750 feet downstream of Mount Savage Lane. | +609 | Unincorporated Areas of Carter County. |
| Wolf Creek (backwater effects from Little Sandy River). | From the confluence with the Little Sandy River to approximately 0.6 mile upstream of the confluence with the Little Sandy River. | +603 | Unincorporated Areas of Carter County. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Unincorporated Areas of Carter County**

Maps are available for inspection at 300 West Main Street, Grayson, KY 41143.

**Jessamine County, Kentucky, and Incorporated Areas**
**Docket No.: FEMA–B–1122**

| | | | |
|---|---|---|---|
| East Hickman Creek Tributary 1 (backwater effects from East Hickman Creek). | From the confluence with East Hickman Creek to approximately 580 feet upstream of the confluence with East Hickman Creek. | +872 | Unincorporated Areas of Jessamine County. |
| Hickman Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 1.9 miles upstream of the confluence with the Kentucky River. | +566 | Unincorporated Areas of Jessamine County. |
| Jessamine Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 0.9 mile upstream of the confluence with Jessamine Creek Tributary 9. | +559 | Unincorporated Areas of Jessamine County. |
| Jessamine Creek Tributary 9 (backwater effects from Kentucky River). | From the confluence with Jessamine Creek to approximately 785 feet upstream of the confluence with Jessamine Creek. | +559 | Unincorporated Areas of Jessamine County. |
| Kentucky River ..... | Approximately 1,770 feet downstream of the confluence with Kentucky River Tributary 4. | +548 | Unincorporated Areas of Jessamine County. |
| | Approximately 2 miles upstream of the confluence with Marble Creek. | +582 | |
| Kentucky River Tributary 2 (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 1,445 feet upstream of River Road (KY–1541). | +573 | Unincorporated Areas of Jessamine County. |
| Kentucky River Tributary 4 (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 0.4 mile upstream of the confluence with the Kentucky River. | +548 | Unincorporated Areas of Jessamine County. |
| Kentucky River Tributary 33 (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 1,900 feet upstream of the confluence with the Kentucky River. | +569 | Unincorporated Areas of Jessamine County. |
| Kentucky River Tributary 83 (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 1,320 feet upstream of the confluence with the Kentucky River. | +576 | Unincorporated Areas of Jessamine County. |
| Left Branch Tributary to Town Fork. | At the confluence with Tributary to Town Fork ..... | +922 | City of Nicholasville, Unincorporated Areas of Jessamine County. |
| | Approximately 385 feet upstream of the confluence with Tributary to Town Fork. | +923 | |
| Little Hickman Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 0.7 mile upstream of the confluence with the Kentucky River. | +566 | Unincorporated Areas of Jessamine County. |
| Marble Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 0.5 mile upstream of the confluence with the Kentucky River. | +580 | Unincorporated Areas of Jessamine County. |
| Tributary to Town Fork ..... | At the confluence with Town Fork ..... | +914 | City of Nicholasville, Unincorporated Areas of Jessamine County. |
| | Approximately 1,080 feet upstream of Miles Road ..... | +927 | |
| West Hickman Creek Tributary 1 (backwater effects from West Hickman Creek). | From the confluence with West Hickman Creek to approximately 90 feet upstream of West Hickman Plant Road. | +884 | Unincorporated Areas of Jessamine County. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Nicholasville**

Maps are available for inspection at City Hall, 517 North Main Street, Nicholasville, KY 40356.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|
| **Unincorporated Areas of Jessamine County**<br>Maps are available for inspection at the Nicholasville City Hall, 517 North Main Street, Nicholasville, KY 40356 | | | |
| **Marshall County, Kentucky, and Incorporated Areas**<br>**Docket No.: FEMA–B–1125** | | | |
| Barrett Branch (backwater effects from Tennessee River). | At the confluence with Little Cypress Creek | +341 | Unincorporated Areas of Marshall County. |
| | Approximately 1,600 feet upstream of the confluence with Howard Branch. | +341 | |
| Bee Creek | Approximately 1,250 feet downstream of KY–408 | +390 | City of Benton, Unincorporated Areas of Marshall County. |
| | Approximately 1,250 feet upstream of KY–408 | +405 | |
| Clear Creek (backwater effects from Kentucky Lake). | From the confluence with Kentucky Lake to approximately 0.8 mile upstream of the confluence with Kentucky Lake. | +375 | Unincorporated Areas of Marshall County. |
| Cypress Creek | Approximately 600 feet downstream of I–24 | +347 | City of Calvert City. |
| | Approximately 900 feet downstream of the confluence with Little John Creek. | +348 | |
| Cypress Creek (backwater effects from Tennessee River). | At the confluence with the Tennessee River | +341 | Unincorporated Areas of Marshall County. |
| | Approximately 0.7 mile downstream of Industrial Parkway (KY–1523). | +341 | |
| East Fork Clarks River | At the confluence with Strow Branch | +361 | City of Benton. |
| | Approximately 0.5 mile upstream of U.S. Route 641 (Main Street). | +365 | |
| Howard Branch (backwater effects from Tennessee River). | From the confluence with Barrett Branch to approximately 0.6 mile upstream of the confluence with Barrett Branch. | +341 | Unincorporated Areas of Marshall County. |
| Jonathan Creek (backwater effects from Kentucky Lake). | From the confluence with Kentucky Lake to approximately 1.6 miles upstream of the confluence with Kentucky Lake. | +375 | Unincorporated Areas of Marshall County. |
| Little Cypress Creek (backwater effects from Tennessee River). | At the confluence with Cypress Creek | +341 | Unincorporated Areas of Marshall County. |
| | Approximately 0.4 mile upstream of U.S. Route 62 | +341 | |
| Little White Oak Creek (backwater effects from Tennessee River). | From the confluence with White Oak Creek to approximately 1 mile upstream of the confluence with White Oak Creek. | +341 | Unincorporated Areas of Marshall County. |
| Olive Branch (backwater effects from Kentucky Lake). | From the confluence with Kentucky Lake to approximately 0.7 mile upstream of the confluence with Kentucky Lake. | +375 | Unincorporated Areas of Marshall County. |
| Olive Branch Tributary 6 (backwater effects from Kentucky Lake). | From the confluence with Olive Branch to approximately 0.6 mile upstream of the confluence with Olive Branch. | +375 | Unincorporated Areas of Marshall County. |
| Ruff Creek (backwater effects from Kentucky Lake). | From the confluence with Kentucky Lake to approximately 0.6 mile upstream of the confluence with Kentucky Lake. | +375 | Unincorporated Areas of Marshall County. |
| Strow Branch | Approximately 500 feet downstream of West 1st Street | +362 | City of Benton, Unincorporated Areas of Marshall County. |
| | Approximately 300 feet downstream of KY–348 | +372 | |
| Strow Branch | Approximately 1,400 feet downstream of Allen Heights Drive. | +407 | Unincorporated Areas of Marshall County. |
| | Approximately 500 feet upstream of Allen Heights Drive | +433 | |
| Strow Branch Tributary H | Approximately 1,000 feet downstream of Colonial Drive | +424 | Unincorporated Areas of Marshall County. |
| | Approximately 100 feet upstream of Colonial Drive | +447 | |
| Tennessee River | Approximately 0.7 mile downstream of the confluence with White Oak Creek. | +340 | City of Calvert City, Unincorporated Areas of Marshall County. |
| | Just downstream of Kentucky Dam | +343 | |
| Town Creek | Approximately 150 feet downstream of the railroad | +370 | City of Benton. |
| | Approximately 950 feet upstream of the railroad | +373 | |
| Town Creek | Approximately 1,300 feet upstream of Main Street | +398 | City of Benton. |
| | At the confluence with Town Creek Tributary E | +410 | |
| Town Creek Tributary C | At the confluence with Town Creek | +370 | City of Benton, Unincorporated Areas of Marshall County. |
| | Just downstream of KY–408 | +378 | |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|
| Town Creek Tributary C | Just downstream of KY–1445 | +389 | City of Benton, Unincorporated Areas of Marshall County. |
| | Approximately 200 feet downstream of Haltom Road | +436 | |
| Town Creek Tributary D | At the confluence with Town Creek | +398 | City of Benton. |
| | Approximately 800 feet upstream of Country Club Lane | +423 | |
| Town Creek Tributary E | Just upstream of Golf Course Road | +416 | Unincorporated Areas of Marshall County. |
| | Approximately 950 feet downstream of the confluence with Town Creek Tributary F. | +436 | |
| Town Creek Tributary F | Approximately 450 feet upstream of the confluence with Town Creek Tributary E. | +449 | Unincorporated Areas of Marshall County. |
| | Approximately 1,100 feet upstream of the confluence with Town Creek Tributary E. | +462 | |
| Tributary A East of Jackson Purchase Parkway. | Approximately 300 feet downstream of the railroad | +371 | City of Benton, Unincorporated Areas of Marshall County. |
| | Approximately 450 feet downstream of Old Symsonia Road. | +397 | |
| Tributary B East of Jackson Purchase Parkway. | At the confluence with Tributary A East of Jackson Purchase Parkway. | +389 | Unincorporated Areas of Marshall County. |
| | Approximately 350 feet downstream of Old Symsonia Road. | +399 | |
| Tributary B West of Jackson Purchase Parkway. | Approximately 350 feet downstream of the railroad | +364 | Unincorporated Areas of Marshall County. |
| | Just downstream of Symsonia Highway (KY–348) | +377 | |
| West Fork Ruff Creek (backwater effects from Kentucky Lake). | From the confluence with Kentucky Lake to approximately 0.6 mile upstream of the confluence with Kentucky Lake. | +375 | Unincorporated Areas of Marshall County. |
| White Oak Creek (backwater effects from Tennessee River). | From the confluence with the Tennessee River to approximately 1.5 miles upstream of the confluence with the Tennessee River. | +340 | Unincorporated Areas of Marshall County. |
| White Oak Creek Tributary 1 (backwater effects from Tennessee River). | From the confluence with White Oak Creek to approximately 1,500 feet upstream of the confluence with White Oak Creek. | +340 | Unincorporated Areas of Marshall County. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Benton**
Maps are available for inspection at 1009 Main Street, Benton, KY 42025.

**City of Calvert City**
Maps are available for inspection at 861 East 5th Avenue, Calvert City, KY 42029.

**Unincorporated Areas of Marshall County**
Maps are available for inspection at 1101 Main Street, Benton, KY 42025.

**Ohio County, Kentucky, and Incorporated Areas**
**Docket No.: FEMA–B–1095**

| | | | |
|---|---|---|---|
| Adams Fork Tributary 22 (backwater effects from Rough River). | From the confluence with Adams Fork to approximately 785 feet upstream of Cross Hill Road. | +417 | Unincorporated Areas of Ohio County. |
| Bartnett Creek (backwater effects from Green River). | From the confluence with the Rough River to approximately 0.7 mile upstream of the confluence with North Fork Bartnett Creek. | +392 | Unincorporated Areas of Ohio County. |
| Bull Run (backwater effects from Green River). | From the confluence with Thoroughfare Stream to approximately 0.61 mile downstream of Cool Springs Road. | +405 | Unincorporated Areas of Ohio County. |
| Caney Creek (backwater effects from Rough River). | From the confluence with the Rough River to approximately 1,700 feet downstream of KY–878. | +425 | Unincorporated Areas of Ohio County. |
| East Fork Williams Creek (backwater effects from Green River). | From the confluence with Williams Creek to approximately 0.94 mile upstream of the confluence with Williams Creek. | +399 | Unincorporated Areas of Ohio County. |

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>^ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|
| Green River | At Western Kentucky Parkway | +401 | Town of Rockport, Unincorporated Areas of Ohio County. |
| | Approximately 3.2 miles upstream of the confluence with Green River Tributary 5. | +412 | |
| Huff Creek (backwater effects from Rough River). | From the confluence with the Rough River to approximately 0.9 mile upstream of abandoned Illinois Central Railroad. | +425 | Unincorporated Areas of Ohio County. |
| Huff Creek Tributary 5 (backwater effects from Rough River). | From the confluence with Huff Creek to approximately 1,380 feet upstream of the confluence with Huff Creek. | +425 | Unincorporated Areas of Ohio County. |
| Lewis Creek (backwater effects from Green River). | From the confluence with the Green River to approximately 1,015 feet downstream of KY–1245. | +400 | Unincorporated Areas of Ohio County. |
| Mill Creek 1 (backwater effects from Rough River). | From the confluence with the Rough River to approximately 700 feet upstream of KY–69. | +399 | Unincorporated Areas of Ohio County. |
| Morrison Run (backwater effects from Rough River). | From the confluence with the Rough River to approximately 140 feet upstream of Utley Drive. | +399 | Unincorporated Areas of Ohio County. |
| Muddy Creek (backwater effects from Green River). | From the confluence with the Rough River to approximately 460 feet upstream of North Main Street. | +394 | Unincorporated Areas of Ohio County. |
| No Creek (backwater effects from Green River). | From the confluence with the Rough River to approximately 1,815 feet upstream of KY–136. | +392 | Unincorporated Areas of Ohio County. |
| North Fork Bartnett Creek (backwater effects from Green River). | From the confluence with Bartnett Creek to approximately 0.65 foot upstream of the confluence with Bartnett Creek. | +392 | City of Hartford, Unincorporated Areas of Ohio County. |
| North Fork Muddy Creek (backwater effects from Green River). | From the confluence with Muddy Creek to approximately 1.7 miles upstream of the confluence with Muddy Creek. | +394 | City of Hartford, Unincorporated Areas of Ohio County. |
| Pond Run 1 (backwater effects from Green River). | From the confluence with the Green River to just upstream of Ken Mine Road. | +402 | Unincorporated Areas of Ohio County. |
| Pond Run (backwater effects from Rough River). | From the confluence with the Rough River to approximately 1.4 miles upstream of the confluence with the Rough River. | +440 | Unincorporated Areas of Ohio County. |
| Render Creek (backwater effects from Green River). | From the confluence with Lewis Creek to approximately 0.8 mile upstream of the confluence with Lewis Creek. | +400 | Unincorporated Areas of Ohio County. |
| Slaty Creek (backwater effects from Green River). | From the confluence with Thoroughfare Stream to approximately 2,520 feet downstream of Barnes Road. | +411 | Unincorporated Areas of Ohio County. |
| Slovers Creek (backwater effects from Rough River). | From the confluence with the Rough River to approximately 666 feet downstream of KY–1414. | +408 | Unincorporated Areas of Ohio County. |
| Slovers Creek Tributary 4 (backwater effects from Rough River). | From the confluence with Slovers Creek to approximately 0.7 mile upstream of the confluence with Slovers Creek. | +409 | Unincorporated Areas of Ohio County. |
| Southards Creek (backwater effects from Green River). | From the confluence with Lewis Creek to approximately 2,150 feet upstream of U.S. Route 62. | +400 | Unincorporated Areas of Ohio County. |
| Spur Creek (backwater effects from Green River). | From the confluence with the Green River to approximately 3.5 miles upstream of the confluence with the Green River. | +403 | Unincorporated Areas of Ohio County. |
| Thoroughfare Stream Tributary 2 (backwater effects from Green River). | From the confluence with Thoroughfare Stream to approximately 402 feet downstream of Schultztown Road. | +405 | Unincorporated Areas of Ohio County. |
| Walton Creek (backwater effects from Green River). | From the confluence with the Rough River to approximately 1.7 miles upstream of the confluence with the Rough River. | +392 | Unincorporated Areas of Ohio County. |
| West Fork Lewis Creek (backwater effects from Green River). | From the confluence with Lewis Creek to approximately 900 feet downstream of Rockport Ceralvo Road. | +400 | Unincorporated Areas of Ohio County. |
| West Fork Lewis Creek Tributary 5 (backwater effects from Green River). | From the confluence with West Fork Lewis Creek to approximately 1,660 feet upstream of KY–85. | +3400 | Unincorporated Areas of Ohio County. |
| Williams Creek (backwater effects from Green River). | From the confluence with the Green River to approximately 1,170 feet upstream of KY–69. | +399 | Unincorporated Areas of Ohio County. |
| Wolfpen Run (backwater effects from Rough River). | From the confluence with the Rough River to approximately 1.3 miles upstream of the confluence with the Rough River. | +413 | Unincorporated Areas of Ohio County. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Hartford**

Maps are available for inspection at City Hall, 116 East Washington Street, Hartford, KY 42347.

**Town of Rockport**

Maps are available for inspection at the Town Hall, 9133 West U.S. Route 62, Rockport, KY 42369.

**Unincorporated Areas of Ohio County**

Maps are available for inspection at the Ohio County Courthouse, 301 South Main Street, Hartford, KY 42347.

**Owen County, Kentucky, and Incorporated Areas**
**Docket No.: FEMA–B–1115**

| | | | |
|---|---|---|---|
| Balls Branch (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 0.4 mile upstream of Point of Rock Road. | +495 | Unincorporated Areas of Owen County. |
| Big Twin Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 2.3 miles upstream of KY–355. | +478 | Unincorporated Areas of Owen County. |
| Cedar Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 1,230 feet upstream of U.S. Route 127. | +493 | City of Monterey, Unincorporated Areas of Owen County. |
| Clay Lick Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 780 feet upstream of the confluence with Clay Lick Creek Tributary 3. | +485 | City of Gratz, Unincorporated Areas of Owen County. |
| Clay Lick Creek Tributary 3 (backwater effects from Kentucky River). | From the confluence with Clay Lick Creek to approximately 1,585 feet upstream of the confluence with Clay Lick Creek. | +485 | Unincorporated Areas of Owen County. |
| Eagle Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 1.2 miles upstream of KY–227. | +473 | Unincorporated Areas of Owen County. |
| Kentucky River ..... | At the confluence with Eagle Creek ..... | +473 | City of Gratz, City of Monterey, Unincorporated Areas of Owen County. |
| | Approximately 3.3 miles upstream of the confluence with Balls Branch. | +497 | |
| Little Twin Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 485 feet upstream of KY–325. | +478 | Unincorporated Areas of Owen County. |
| Lowderbach Branch (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 0.5 mile upstream of KY–355. | +485 | City of Gratz, Unincorporated Areas of Owen County. |
| Mill Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 100 feet downstream of KY–355. | +478 | Unincorporated Areas of Owen County. |
| Mint Spring Branch (backwater effects from Kentucky River). | From the confluence with Severn Creek to approximately 0.45 mile upstream of the confluence with Severn Creek. | +489 | Unincorporated Areas of Owen County. |
| Severn Creek (backwater effects from Kentucky River). | From the confluence with the Kentucky River to approximately 1.6 miles upstream of the confluence with Mint Spring Branch. | +489 | Unincorporated Areas of Owen County. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Gratz**

Maps are available for inspection at City Hall, 94 Main Street, Gratz, KY 40327.

**City of Monterey**

Maps are available for inspection at City Hall, 610 Monterey Pike, Monterey, KY 40359.

**Unincorporated Areas of Owen County**

Maps are available for inspection at the Owen County Courthouse, 100 North Thomas Street, Owenton, KY 40359.

**Lawrence County, Mississippi, and Incorporated Areas**
**Docket No.: FEMA–B–1093**

| | | | |
|---|---|---|---|
| Runnels Creek ..... | Approximately 0.5 mile downstream of Robinwood Road .. | +193 | Town of Monticello, Unincorporated Areas of Lawrence County. |
| | Approximately 100 feet downstream of Robinwood Road | +193 | |

* National Geodetic Vertical Datum.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|

+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Town of Monticello**

Maps are available for inspection at 202 Jefferson Street South, Monticello, MS 39654.

**Unincorporated Areas of Lawrence County**

Maps are available for inspection at 435 Brinson Street, Monticello, MS 39564.

**Noxubee County, Mississippi, and Incorporated Areas**

| **Docket No.: FEMA–B–1089** | | | |
|---|---|---|---|
| Tombigbee River | At the Lowndes County boundary | +155 | Unincorporated Areas of Noxubee County. |
| | Approximately 3.1 miles upstream of the Lowndes County boundary. | +156 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Unincorporated Areas of Noxubee County**

Maps are available for inspection at the Noxubee County Courthouse, 505 South Jefferson Street, Macon, MS 39341.

**Hancock County, Ohio, and Incorporated Areas**
**Docket No.: FEMA–B–1095**

| | | | |
|---|---|---|---|
| Blanchard River | Approximately 1,300 feet upstream of County Highway 140. | +772 | Unincorporated Areas of Hancock County. |
| | Approximately 2,000 feet downstream of Township Road 241. | +786 | |
| Eagle Creek | Approximately 0.53 mile downstream of Township Road 204. | +783 | Unincorporated Areas of Hancock County. |
| | Approximately 1,100 feet downstream of Township Road 49. | +797 | |
| Lye Creek | Approximately 0.61 mile downstream of County Highway 180. | +779 | Unincorporated Areas of Hancock County. |
| | Just downstream of County Highway 180 | +781 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Unincorporated Areas of Hancock County**

Maps are available for inspection at 300 South Main Street, Findlay, OH 45840.

**Benton County, Oregon, and Incorporated Areas**
**Docket No.: FEMA–B–1101**

| | | | |
|---|---|---|---|
| Willamette River | Approximately 400 feet upstream of Reiling Lane near the Long Tom River. | +282 | City of Monroe. |
| | Approximately 0.43 mile upstream of Reiling Lane near the Long Tom River. | +282 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**City of Monroe**

Maps are available for inspection at 664 Commercial Street, Monroe, OR 97456.

| Flooding source(s) | Location of referenced elevation | * Elevation in feet (NGVD)<br>+ Elevation in feet (NAVD)<br># Depth in feet above ground<br>∧ Elevation in meters (MSL)<br>Modified | Communities affected |
|---|---|---|---|
| **Hill County, Texas, and Incorporated Areas<br>Docket No.: FEMA–B–1068** | | | |
| Hackberry Creek | Approximately 1,000 feet downstream of the confluence with Tributary of Hackberry Creek. | +557 | Unincorporated Areas of Hill County. |
| | Just upstream of the confluence with Little Hackberry Creek. | +563 | |
| Little Hackberry Creek | At the confluence with Hackberry Creek | +563 | Unincorporated Areas of Hill County. |
| | Approximately 1,500 feet upstream of the confluence with Pecan Creek. | +568 | |
| Pecan Creek | At the confluence with Little Hackberry Creek | +568 | Unincorporated Areas of Hill County. |
| | Just upstream of State Highway 171 | +579 | |
| Stream WC–1A | Approximately 850 feet upstream of State Highway Spur 180. | +587 | Unincorporated Areas of Hill County. |
| | Approximately 750 feet downstream of County Road 1244 | +597 | |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

**ADDRESSES**

**Unincorporated Areas of Hill County**

Maps are available for inspection at the Hill County Courthouse, 201 East Franklin Street, Hillsboro, TX 76645.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 8, 2011.

**Edward L. Connor,**

*Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2011–3903 Filed 2–18–11; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR parts 205 and 210

**RIN 0750–AG69**

## Defense Federal Acquisition Regulations Supplement; Publication of Notification of Bundling of Contracts of the Department of Defense (DFARS Case 2009–D033)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Fiscal Year 2010 National Defense Authorization Act, section 820, entitled "Publication of Notification of Bundling of Contracts of the Department of Defense."

Dates: *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703–602–1302.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD published an interim rule at 75 FR 40714 on July 13, 2010, to implement section 820 of the Fiscal Year 2010 National Defense Authorization Act (Pub. L. 111–84), enacted October 28, 2009. The period for public comment closed on September 13, 2010. The interim rule added a requirement at DFARS 205.205–70 to publish a notification of the intention to bundle a DoD procurement at least 30 days prior to (1) the release of a solicitation or (2) placing an order without a solicitation. This notification requirement is in addition to the existing requirements for market research at DFARS 210.001 when an acquisition could lead to a consolidation of contract requirements (*see* DFARS 210.001(c)(2)).

DoD received no comments on the proposed rule. Therefore, DoD is finalizing the interim rule without change.

### II. Executive Order 12866

This rule is not a significant regulatory action and therefore was not subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

### III. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows.

This final rule amends the DFARS to implement section 820 of the National Defense Authorization Act for Fiscal Year 2010. Section 820 requires DoD contracting officers to publish a notification consistent with the requirements of FAR 10.001(c)(2) on FedBizOpps.gov, or any successor site, at least 30 days prior to the release of a solicitation for a bundled acquisition.

In addition, if the DoD agency has determined that measurably substantial benefits are expected to be derived as a result of bundling, the notification must include a brief description of those benefits. The objective of the rule is to enable small businesses to compete for more work of which the firms might otherwise have been unaware. The notification requirement will provide a much broader segment of the small-business community awareness of upcoming business opportunities and then allow the small business to either submit a proposal or interact with the requiring agency to request unbundling before the solicitation is finalized. No comments were received from small entities on this rule.

### IV. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subjects in 48 CFR Parts 205 and 210

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 205 and 210 published at 75 FR 40714 on July 13, 2010, is adopted as final without change.

[FR Doc. 2011–3756 Filed 2–18–11; 8:45 am]

BILLING CODE 5001–08–P

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## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Part 217

**RIN 0750–AG67**

## Defense Federal Acquisition Regulation Supplement; Limitations on Procurements With Non-Defense Agencies (DFARS Case 2009–D027)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is adopting without change an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 806 of the National Defense Authorization Act for Fiscal Year 2010. Section 806 authorizes an agency that is an element of the intelligence community to award a contract for supplies or services in excess of the simplified acquisition threshold for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703–602–1302.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD published an interim rule at 75 FR 32639 on June 8, 2010, to implement section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), providing limitations on procurements with non-Defense agencies. The public comment period closed August 9, 2010. No comments were received in response to the interim rule.

### II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### III. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule addresses internal DoD procedural matters only. Specifically, this implementation of section 806 of the National Defense Authorization Act for Fiscal Year 2010, Treatment of Non-Defense Agency Procurements Under Joint Programs with Intelligence Community, amends the limitations placed on procurements by non-DoD agencies by exempting such procurements that are: (a) Entered into by a non-DoD agency that is an element of the intelligence community and (b) when the procurement is for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency. The statute resulted in changes to internal operating procedures with no impact on contractors or offerors.

### IV. Paperwork Reduction Act

The changes to the DFARS do not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subjects in 48 CFR Part 217

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 217 published at 75 FR 32639 on June 8, 2010, is adopted as final without change.

[FR Doc. 2011–3754 Filed 2–18–11; 8:45 am]

BILLING CODE 5001–08–P

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## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Part 219

**RIN 0750–AH06**

## Defense Federal Acquisition Regulation Supplement; Repeal of the Small Business Competitiveness Demonstration Program (DFARS Case 2011–D001)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Acquisition Regulation Supplement (DFARS) to implement section 1335 of the Small Business Jobs Act of 2010. Section 1335 repealed the Small Business Competitiveness Demonstration Program.

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Manual Quinones, 703–602–8383.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This final rule amends the Defense Federal Acquisition Regulation Supplement by deleting subpart DFARS 219.10 to meet the requirements of section 1335 of the Small Business Jobs Act of 2010, (Pub. L. 111–240). Section 1335 amended the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656) by striking title VII (15 U.S.C. 644 note). The repeal of the Small Business Competitiveness Demonstration Program became effective immediately upon the enactment. It will apply to the first full fiscal year after the September 27, 2010, date of enactment (Fiscal Year 2011). Therefore, the text at DFARS subpart 219.10 is obsolete.

### II. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of the Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

This final rule does not constitute a significant DFARS revision as defined at FAR 1.501–1 because this rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Government. Therefore, publication for public comment under 41 U.S.C. 418b is not required.

### IV. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subjects in 48 CFR Part 219

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 219 is amended as follows:

## PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 219 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## Subpart 219.10—[Removed]

■ 2. Remove subpart 219.10.

[FR Doc. 2011–3762 Filed 2–18–11; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R9–IA–2008–0069; 92210–0–0010 B6]**

**RIN 1018–AV73**

## Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the New Zealand/Australia distinct population segment of the southern rockhopper penguin (*Eudyptes chrysocome*) under the Endangered Species Act of 1973, as amended. This final rule implements the Federal protections provided by the Act for this species.

**DATES:** This rule becomes effective March 24, 2011.

**ADDRESSES:** This final rule is available on the Internet at *http://www.regulations.gov* and comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 400, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Janine Van Norman, Branch Chief, Foreign Species Branch, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), is a law that was passed to prevent extinction of species by providing measures to help alleviate the loss of species and their habitats. Before a plant or animal species can receive the protection provided by the Act, it must first be added to the Federal Lists of Endangered and Threatened Wildlife and Plants; section 4 of the Act and its implementing regulations at 50 CFR 424 set forth the procedures for adding species to these lists.

### Previous Federal Actions

On November 29, 2006, the U.S. Fish and Wildlife Service (Service) received a petition from the Center for Biological Diversity (CBD) to list 12 penguin species under the Act: emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi*), Fiordland crested penguin (*Eudyptes pachyrhynchus*), snares crested penguin (*Eudyptes robustus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), royal penguin (*Eudyptes schlegeli*), white-flippered penguin (*Eudyptula minor albosignata*), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*).

On July 11, 2007, we published in the **Federal Register** a 90-day finding (72 FR 37695) in which we determined that the petition presented substantial scientific or commercial information indicating that listing 10 of the penguin species as endangered or threatened may be warranted, but determined that the petition did not provide substantial scientific or commercial information indicating that listing the snares crested penguin and the royal penguin as endangered or threatened may be warranted.

Following the publication of our 90-day finding on this petition, we initiated a status review to determine if listing each of the 10 species was warranted, and sought information from the public and interested parties on the status of the 10 species of penguins. In addition, we attended the International Penguin Conference in Hobart, Tasmania, Australia, a quadrennial meeting of penguin scientists from September 3–7, 2007, to gather information and to ensure that experts were aware of the status review. We also consulted with other agencies and range countries in an effort to gather the best available scientific and commercial information on these species.

On December 3, 2007, we received a 60-day Notice of Intent to Sue from the CBD. On February 27, 2008, CBD filed a complaint against the Department of the Interior for failure to make a 12-month finding (status determination) on the petition. On September 8, 2008, we entered into a settlement agreement with the CBD, in which we agreed to submit to the **Federal Register** 12-month findings for the 10 species of penguins, including the southern rockhopper

penguin, on or before December 19, 2008.

On December 18, 2008, we published three documents: (1) A warranted 12-month finding and proposed rule to list the African penguin as endangered under the Act (73 FR 77332); (2) a warranted 12-month finding and proposed rule to list the yellow-eyed penguin, white-flippered penguin, Fiordland crested penguin, Humboldt penguin, and erect-crested penguin as threatened under the Act (73 FR 77303); and (3) a warranted 12-month finding and proposed rule to list a significant portion of the ranfge (SPR) of the New Zealand/Australia distinct population segment (DPS) of the southern rockhopper penguin as threatened under the Act, together with a not-warranted 12-month finding to list the remainder of the range of the southern rockhopper penguin, as well as any portion of the range for the northern rockhopper penguin, macaroni penguin, and emperor penguin (73 FR 77264).

We finalized the actions listed in (1) and (2) above on September 28, 2010 (75 FR 59645), and August 3, 2010 (75 FR 45497), respectively. This final rule completes the action referred to in (3) above.

The SPR we proposed for listing for the southern rockhopper penguin on December 18, 2010 (73 FR 77264), was the Campbell Plateau portion of the New Zealand/Australia (NZ–AUS) DPS. We implemented the Service's peer review process and opened a 60-day comment period to solicit scientific and commercial information on the species from all interested parties following publication of the proposed rule.

On March 9, 2010, CBD filed a complaint against the Service for failure to issue a final listing determination for seven penguin species, including the Campbell Plateau SPR of the NZ–AUS DPS of southern rockhopper penguin, within 12 months of the proposals to list the species. In a court-approved settlement agreement, the Service agreed to submit a final listing determination for the Campbell Plateau SPR of the NZ–AUS DPS of southern rockhopper penguin to the **Federal Register** by February 18, 2011.

## Summary of Comments and Recommendations

We base this final listing determination on a review of the best scientific and commercial information available, including all information received during the public comment period. In the December 18, 2008, proposed rule (73 FR 77264), we requested that all interested parties submit information that might contribute to development of a final rule. We also contacted appropriate scientific experts and invited them to comment on the proposed listing. We received 6 comments on our proposed action: 4 from members of the public and 2 from peer reviewers. Two members of the public indicated the species should be listed range-wide but did not provide new or additional information to support this claim. We also received several comments and new information pertaining to species, or portions of the southern rockhopper penguin's range, we determined in our 2008 status review (73 FR 77264) were not warranted for listing. We thank the public and peer reviewers for this information and request that the public and peer reviewers continue to submit to our office (*see* **ADDRESSES**) any new information concerning the status of, or threats to, these species. New information will help us monitor the status of the species.

We reviewed all comments we received from the public and peer reviewers for substantive issues and new information regarding the proposed listing of the Campbell Plateau SPR of the NZ–AUS DPS of southern rockhopper penguin. We address those comments below.

## Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from two of the peer reviewers from whom we requested comments. They generally agreed that the description of the biology and habitat for the species was accurate and based on the best available information. New or additional information on the biology of, and threats to, the southern rockhopper penguin was provided and incorporated into this rulemaking as appropriate. In some cases, it has been indicated in the citations by "personal communication" (pers. comm.), which could indicate either an email or telephone conversation; in other cases, the research citation is provided.

### *Peer Reviewer Comments*

*(1) Comment:* One peer reviewer found the analysis and approach used in the proposed rule to be appropriate and scientifically sound given the quality and patchiness of available data. However, this reviewer noted inconsistencies in the proposed rule related to trends on Macquarie Island. The reviewer noted that in the Campbell Plateau SPR analysis we stated "numbers at Macquarie Island are reported to be stable", while in other sections of the proposed rule we indicated population trends on Macquarie Island were uncertain due to poor data. The reviewer also states that the Macquarie Island population is believed to have decreased from earlier reports of distribution and abundance, and that it would be more appropriate to describe the Macquarie Island population as possibly stable following a decrease during the past 30 or so years.

*Our Response:* We agree with the peer reviewer regarding inconsistencies in statements in the proposed rule related to Macquarie Island population trends. The evidence does not support our statement in the proposed rule that numbers at Macquarie Island are reported to be stable. Rather, reports indicate uncertain, or declining, population trends on the island. We appreciate the reviewer's clarification that numbers are believed to have decreased over recent decades from those of earlier estimates. We have made changes to this final rule to address the inconsistencies in the proposed rule and characterize the Macquarie Island population as decreasing.

### *Public Comments*

*(2) Comment:* One commenter expressed concern over the listing of a species that occurs wholly outside the United States, and questioned the protections afforded by the Act.

*Our Response:* We appreciate this comment and the opportunity to clarify the stipulations of the Act. The Act stipulates that we are to list any species determined under the Act to be endangered or threatened throughout all or a significant portion of its range. The Act calls for this regardless of whether the species occurs partially or wholly within or outside the United States. Protections for foreign species under the Act include, among other things, prohibitions on import and export into or from the United States, and prohibitions on sale or commercial transport in interstate or foreign commerce. Protections also include provisions for: (1) Financial assistance to countries in which species listed as endangered or threatened under the Act occur; (2) encouragement of foreign programs to provide for the conservation of species, including those listed under the Act; (3) technical assistance from Department of the Interior personnel; and (4) law enforcement investigations and research abroad as deemed necessary to carry out

the purposes of the Act. For more information on this subject, *see Available Conservation Measures,* below.

*(3) Comment:* One commenter asserted that the best available science on the taxonomic status of the southern rockhopper penguin indicates the species be classified as two subspecies, that we should have considered the southern rockhopper penguin as two subspecies, and that we should analyze population status and threats for each subspecies accordingly. The commenter further asserted that doing so may change our Significant Portion of the Range analyses and conclusions. The commenter also states that we failed to provide a justification as to why we accepted BirdLife International's (BLI) treatment of the taxa as two species but not BLI's treatment of the southern rockhopper species as two subspecies.

*Our Response:* We accepted BLI's assessment of the two genetic studies published in 2006, one which concluded that the taxa be considered two species (Jouventin *et al.* 2006), and one which concluded it be considered three species (Banks *et al.* 2006). BLI rejected Banks *et al.'s* (2006) conclusion on the basis of small sample sizes used in their study and limited morphological differences between the southern and eastern forms. We agreed with BLI's assessment of these two studies, and we accepted Jouventin *et al.* (2006) as the best available science on the taxonomy of the complex. The commenter provided no new information on this subject, and we uphold our decision to accept Jouventin *et al.* (2006) as the best available science in this final rule.

We agree with the commenter that treating the southern rockhopper penguin as comprising two subspecies may change our SPR analyses and conclusions. However, we do not accept BLI's treatment of the southern rockhopper penguin as two subspecies. Jouventin *et al.* (2006), which we accept as the best available information, did not make any conclusions regarding further divisions or subspecies classification within the taxa. They indicate that their research does not allow them to make conclusions beyond those made, i.e. that rockhopper penguins consist of two species. In addition, the three recent genetic studies (discussed above) include samples from only two of the three widely separated regions (Indian Ocean, Pacific Ocean, and Patagonia-Atlantic Ocean) in which southern rockhopper penguins occur. None of these studies analyzed samples from the Pacific Ocean region (the NZ–AUS DPS), and, as a result, subspecies relationships within the southern rockhopper species are uncertain. That the species taxonomy remains uncertain is supported by the fact that a comprehensive investigation of southern rockhopper penguin taxonomy is a key recommendation of a recent international workshop tasked with producing a plan for rockhopper penguin research and conservation (BLI 2010, p. 8). Because a complete taxonomy of southern rockhopper penguin is lacking, and because Jouventin *et al.* (2006), whom we have determined represents the best available science, were unable to make conclusions on subspecies classification, we treat the southern rockhopper penguin as one undivided species and consider our SPR analysis and conclusions to be appropriate.

As discussed in this final rule, recent evidence presented in de Dinechin *et al.* (2009) supports the conclusions of Banks *et al.* (2006) that the rockhopper taxa consists of three species. Therefore, this new evidence could also be interpreted as lending support to the commenter's assertion that the southern rockhopper penguin be considered two subspecies. However, as discussed above, BLI has yet to consider the new evidence provided in de Dinechin *et al.* (2009), and still considers the taxa as two species. Because we rely on BLI for expert assessment of the literature pertaining to the taxonomy of the species, and because there are current gaps in taxonomic research on the species, especially with respect to the NZ–AUS DPS, we continue to consider Jouventin *et al.* (2006) the best available science and, consequently, treat the rockhopper penguin as two species, and the southern rockhopper penguin as an undivided species.

We have made changes in this final rule to clarify our rationale and justification for why we did not accept BLI's treatment of the southern rockhopper penguin as two subspecies.

*(4) Comment:* The same commenter stated that our analysis of Factor A (the Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range) omits any mention or discussion of ocean acidification, and thus fails to consider the best available science on the threat that ocean acidification poses to the southern rockhopper penguin's marine foraging habitat and prey species.

*Our Response:* We acknowledge that the issue of ocean acidification was not directly addressed in the proposed rule. With respect to penguins, the best available information does not address how ocean acidity would impact the physiology of, and food web associated with, this penguin species. We acknowledge that ocean acidification may be a concern, but at this time, any conclusion would be purely speculative regarding how much the oceanic pH may change in the penguins' habitat and how subsequent changes in the species' environments would interact with other known threats. The manner in which a change in ocean pH may affect penguins is currently unpredictable.

## Summary of Changes From Proposed Rule

We fully considered comments from the public and peer reviewers on the proposed rule to develop this final listing of the NZ–AUS DPS of the southern rockhopper penguin. This final rule incorporates changes to our proposed listing based on the comments that we received that are discussed above, and newly available scientific and commercial information.

We made some technical corrections to this final rule, added clarifying language, and added new information where appropriate, based on comments we received and new information available. None of the information changed our determination that the southern rockhopper penguin within the Campbell Plateau region warrants listing as threatened. However, due to peer reviewer comments and newly available information, in this final rule we determine that the population on Macquarie Island is declining and is threatened by changes in the marine environment. We therefore determine that the species is threatened throughout the entire NZ–AUS DPS, and we list the entire DPS as threatened in this final rule. We feel that listing the entire DPS represents a relatively minor change from the proposed action. Although listing the entire DPS adds an additional range country to the affected area, it extends protections of the Act to penguins breeding on only one additional island in the Pacific Ocean region of the species' range.

## Species Information

### *Taxonomy*

Rockhopper penguins are among the smallest of the world's penguins, averaging 20 inches (in) (52 centimeters (cm)) in length and 6.6 pounds (lbs) (3 kilograms (kg)) in weight. They are the most widespread of the crested penguins (genus *Eudyptes*), and are so named because of the way they hop from boulder to boulder when moving around their rocky colonies. Rockhopper penguins are found on islands from near the Antarctic Polar

Front to near the Subtropical Convergence, in the South Atlantic, Pacific, and Indian Oceans (Marchant and Higgins 1990, p. 183).

The taxonomy of the rockhopper complex is contentious. Formerly treated as three subspecies (Marchant and Higgins 1990, p. 182), recent papers suggest that these should be treated as either two species (Jouventin *et al.* 2006, pp. 3,413–3,423) or three species (Banks *et al.* 2006, pp. 61–67; de Dinechin *et al.* 2009, pp. 693–702).

Jouventin *et al.* (2006, pp. 3,413–3,423), following up on recorded differences in breeding phenology, song characteristics, and head ornaments used as mating signals, conducted genetic analysis between northern subtropical rockhopper penguins and southern subantarctic rockhopper penguins using the Subtropical Convergence, a major ecological boundary for marine organisms, as the dividing line between them. Their results supported the separation of *E. chrysocome* into two species, the southern rockhopper (*E. chrysocome*) and the northern rockhopper (*E. moseleyi*).

Banks *et al.* (2006, pp. 61–67) compared the genetic distances between the three rockhopper subspecies and compared them with such sister species as macaroni penguins. Banks *et al.* (2006, pp. 61–67) suggested that three rockhopper subspecies—southern rockhopper (*E. chrysocome chrysocome*), eastern rockhopper (*E. chrysocome filholi*), and northern rockhopper (*E. chrysocome moseleyi*)—should be split into three species.

More recently, de Dinechin *et al.* (2009, pp. 693–702) used gene sequences from Jouventin *et al.* (2006), Banks *et al.* (2006), and new samples from the Falkland Islands to determine divergence times between populations. Their results suggest the rockhopper complex consists of three species, supporting the conclusions of Banks *et al.* (2006).

Despite these three genetic studies, the taxonomy of rockhopper penguins remains uncertain due to gaps in the taxonomic research. For instance, the three genetic studies (discussed above) include samples from only two of the three widely separated regions (Indian Ocean, Pacific Ocean, and Patagonia-Atlantic Ocean) in which southern rockhopper penguins breed. None of these studies analyzed samples from the Pacific Ocean region (the NZ–AUS DPS).

BLI (2007, p. 1; 2008a, p. 1) reviewed the two papers published in 2006 and made the decision to adopt, for the purposes of their continued compilation of information on the status of birds, the conclusion of Jouventin *et al.* (2006, p. 3,419) that there are two species of rockhopper penguin. In doing so, they noted that the proposed splitting of an eastern rockhopper species from *E. chrysocome* had been rejected because of small sample sizes and weak morphological differentiations between the circumpolar populations south of the Subtropical Convergence (BLI 2008a, p. 1; Banks *et al.* 2006, p. 67). Thus, BLI considered Jouventin *et al.* (2006) the best available science. BLI has yet to consider the new evidence presented in de Dinechin *et al.* (2009), and still treats the rockhopper complex as consisting of two species.

We do not accept BLI's treatment of the southern rockhopper species as consisting of two subspecies. Jouventin *et al.* (2006), on which BLI based their decision to treat rockhopper penguins as two species, do not make any conclusions regarding further divisions within these species, or subspecies classification. They indicate that their research provides evidence for speciation between northern and southern rockhopper populations, but explicitly refrain from making conclusions on the taxonomic structure of rockhopper penguins as a whole, noting that further research is needed to determine the definitive taxonomy of the genus (Jouventin *et al.* 2006, pp. 3,421). In addition, existing genetic studies do not include analysis of samples from the NZ–AUS DPS, which comprises one of the three regions in the world in which southern rockhopper penguins breed. As a result, subspecies relationships within the southern rockhopper species are uncertain. The uncertainty of the species taxonomy is further supported by the fact that a comprehensive investigation of southern rockhopper penguin taxonomy was a key recommendation of a recent international workshop tasked with producing a plan for rockhopper penguin research and conservation (BLI 2010, p. 8). Because a complete taxonomy of southern rockhopper penguin is lacking, and because Jouventin *et al.* (2006, pp. 3,413–3,423), whom we have determined represents the best available science, were unable to make conclusions on subspecies classification, we treat the southern rockhopper penguin as one undivided species. However, we will continue to evaluate the taxonomy of rockhopper penguins as new information becomes available and will reevaluate their status as appropriate.

On the basis of our review, we accept Jouventin *et al.* (2006) as the best available science and treat the rockhopper penguins as two species, the northern rockhopper penguin (*E. moseleyi*) and the southern rockhopper penguin (*E. chrysocome*). We accept Jouventin *et al.* (2006) as the best available science because the rockhopper taxonomy is uncertain, because we accept BLI's assessment of the literature and determination that Jouventin *et al.* (2006) represents the best available science on the subject, and because BLI has yet to consider de Dinechin *et al.* (2009).

*Life History of Southern Rockhopper Penguins*

In general, southern rockhopper penguin breeding begins in early October (the austral spring) when males arrive at the breeding site a few days before females. Breeding takes place as soon as the females arrive, and two eggs are laid 4 to 5 days apart in early November. The first egg laid is typically smaller than the second, 2.8 versus 3.9 ounces (oz) (80 versus 110 grams (g)), and is the first to hatch. Incubation lasts about 33 days and is divided into three roughly equal shifts. During the first 10-day shift, both parents are in attendance. Then, the male leaves to feed while the female incubates during the second shift. The male returns to take on the third shift. He generally remains for the duration of incubation and afterward to brood the chicks while the female leaves to forage and returns to feed the chicks. Such a system of extended shift duration requires lengthy fasts for both parents, but allows them to forage farther afield than would be the case if they had a daily changeover. The newly hatched chicks may have to wait up to a week before the female returns with their first feed. During this period, chicks are able to survive on existing yolk reserves, after which they begin receiving regular feedings of around 5 oz (150 g) in weight. By the end of the 25 days of brooding, chicks are receiving regular feedings averaging around 1 lb 5 oz (600 g). By this stage they are able to leave the nest and group (crèche) with other chicks, allowing both adults to forage to meet the chicks' increasing demands for food (Marchant and Higgins 1990, p. 190).

During the breeding season, penguins are susceptible to local ecosystem perturbations because they are constrained by how far they can swim from the terrestrial habitat in search of food (Davis 2001, p. 9). Therefore, a decrease in food availability could have substantial consequences on reproductive success. Southern rockhopper penguins typically rear only one of two chicks, although those near the Falkland Islands are capable of

rearing both chicks to fledging when conditions are favorable (Guinard *et al.* 1998, p. 226). Reported breeding success is highly variable, ranging from 0.23 to 0.91 chicks per breeding pair, with the greatest reported success rate (0.91 chicks per breeding pair) occurring at the Falkland Islands (Crawford *et al.* 2008, p. 186; Hull *et al.* 2005, p. 714; Raya Ray *et al.* 2007, p. 829; Poisbleau *et al.* 2008, p. 930; Clausen and Putz 2002, p. 51). Chicks fledge at around 10 weeks of age, and adults then spend 20 to 25 days at sea building up body fat reserves in preparation for their annual molt. The molt lasts for around 25 days, and the birds then abandon the breeding site. They spend the winter feeding at sea, prior to returning the following spring (Marchant and Higgins 1990, p. 185).

The southern rockhopper penguin is widely distributed around the Southern Ocean, breeding on subantarctic islands in the Indian, Pacific, and Atlantic Oceans (Shirihai 2002, p. 71; Otley and Thompson 2010, p. 28). Breeding islands are clustered in three different geographic regions: the Pacific Ocean region, which comprises the NZ–AUS DPS; the Patagonia region, which includes the Falkland Islands and breeding islands in the southeast Pacific Ocean and southwest Atlantic Ocean surrounding Patagonia; and the Indian Ocean region. Southern rockhopper penguin range includes island breeding habitat and marine foraging areas. In the breeding season, these marine foraging areas may lie within as little as 6 miles (mi) (10 kilometers (km)) of the colony (as at the Crozet Archipelago in the Indian Ocean), as distant as 97 mi (157 km) (as at the Prince Edward Islands in the Indian Ocean), or for male rockhopper penguins foraging during the incubation stage at the Falkland Islands in the Southwest Atlantic, as much as 289 mi (466 km) away (Sagar *et al.* 2005, p. 79; Putz *et al.* 2003, p. 141). Foraging ranges vary according to the geographic, geologic, and oceanographic location of the breeding sites and their proximity to sea floor features (such as the continental slope and its margins or the subantarctic slope) and oceanographic features (such as the polar frontal zone or the Falkland current) (Sagar *et al.* 2005, pp. 79–80). Winter at-sea foraging areas are less well-documented, but penguins from the Staten Island breeding colony at the tip of South America dispersed over a range of 501,800 square miles ($mi^2$) (1.3 million square kilometers ($km^2$)) covering polar, sub-polar, and temperate waters in oceanic regions of the Atlantic and Pacific as well as shelf waters (Putz *et al.* 2006, p. 735) and traveled up to 1,242 mi (2,000 km) from the colony.

*Distribution and Abundance in the NZ–AUS DPS*

The NZ–AUS DPS is comprised of the marine foraging area and four breeding islands within the Pacific Ocean region. These four islands are: Macquarie Island (in Australia waters); and Campbell, Auckland, and Antipodes Islands (in New Zealand waters) (BLI 2007, pp. 2–3; Woehler 1993, pp. 58–61; Gales *et al.* 2010, pp. 92–93). Southern rockhopper penguin breeding colonies within the NZ–AUS DPS inhabit a unique ecological and geographical position in the range of the species. The underwater topography and oceanography of this area is unique and has been described in detail in the Macquarie Island Management Plan (Parks and Wildlife Service (Australia) 2006, pp. 20–22). The islands sit in areas of relatively shallow water, generally less than 3,280 ft (1,000 m) deep. Macquarie Island is on the shallow Macquarie Ridge, which is associated with a deep trench to the east, and connects to the north with the broader Campbell Plateau, an extensive area of shallow water that is part of the continental shelf extending southeast from New Zealand. The New Zealand islands (Campbell, Auckland, and Antipodes) with breeding colonies of southern rockhopper penguins are located on the Campbell Plateau. This region and all their associated islands are located north of the Antarctic Polar Front Zone (APFZ), a distinct hydrographic boundary with cold, nutrient-rich, surface waters to the south and warmer, less rich, water to the north. In addition, the Macquarie Ridge and Campbell Plateau form a major obstruction to the Antarctic Circumpolar Current, which runs easterly at about 50° S latitude. This further increases the high degree of turbulence and current variability in the area and is likely to directly or indirectly encourage biological productivity (Parks and Wildlife Service (Australia) 2006, pp. 20–22).

Historical numbers of southern rockhopper penguins in this region may have been as high as 960,000 breeding pairs, with declines recorded from the New Zealand islands. Currently there are approximately 89,600–101,500 breeding pairs in the region, which represents 6 to 7 percent of the current estimated population of 1.4 million southern rockhopper penguin breeding pairs range-wide.

*Macquarie Island*

Order of magnitude estimates at Macquarie Island (Australia) reported 100,000–300,000 pairs in the early 1980s (Woehler 1993, p. 60; Taylor 2000, p. 54). The 2006 Management Plan for the Macquarie Island Nature Reserve and World Heritage Area reported that the total number of southern rockhopper penguins in this area may be as high as 100,000 breeding pairs. However, estimates from 2006–07 indicate 32,000–43,000 breeding pairs at Macquarie Island (BLI 2008, p. 2), an order of magnitude lower than the earlier categorical estimate. Given that the earlier estimate is categorical, quantitative data on trends on this island are not available. However, expert opinion suggests a declining trend on the island. Gales *et al.* (2010, p. 93) state that there are no reliable data on trends, but categorize the population, based on anecdotal observations, as having decreased. Hilton and Otley (2010, pp. 32–33) acknowledge the lack of quantitative information on the population but categorize the long-term population trend as decreasing. Woehler (2009, pp. 1–2) describes the population as possibly stable following a decrease during, approximately, the last 30 years. Given these expert opinions on long-term trends, Woehler's uncertainty about the current stability of the population, and a lack of evidence indicating the population is currently stable, we rely on these expert opinions to qualify the general long-term population trend on the island as decreasing.

*Campbell, Auckland, and Antipodes Islands*

In New Zealand territory, southern rockhopper penguin numbers at Campbell Island declined by 94 percent between the early 1940s and 1985 from approximately 800,000 breeding pairs to 51,500 (Cunningham and Moors 1994, p. 32). The majority of the decline appears to have coincided with a period of warmed sea surface temperatures between 1946 and 1956. It is widely inferred that warmer waters most likely affected southern rockhopper penguins through changes in the abundance, availability, and distribution of their food supply (Cunningham and Moors 1994, p. 34); recent research suggests they may have had to work harder to find the same food (Thompson and Sagar 2002, p. 11). According to standard photographic monitoring, numbers in most colonies at Campbell Island continued to decline from 1985 to the mid-1990s (Taylor 2000, p. 54), although the extent of such declines has not been quantified in the literature. The New Zealand Department of Conservation (DOC) provided

preliminary information from a 2007 Campbell Island survey team that "the population is still in decline" (Houston 2008, p. 1), but quantitative analysis of these data has not yet been completed. At the Auckland Islands, a survey in 1990 found 10 colonies produced an estimate of 2,700–3,600 breeding pairs of southern rockhopper penguins (Cooper 1992, p. 66). This was a decrease from 1983, when 5,000–10,000 pairs were counted (Taylor 2000, p. 54). There has been a large decline at Antipodes Islands from 50,000 breeding pairs in 1978 to 4,000 pairs in 1995 (Tennyson *et al.* 2002, p. 244). There is no more recent data for Auckland or Antipodes Islands (Houston 2008, p. 1).

*Other Status Classifications*

The IUCN (International Union for Conservation of Nature) Red List classifies the entire southern rockhopper penguin species as 'Vulnerable' due to rapid population declines, which "appear to have worsened in recent years." Southern rockhopper penguins are listed under New Zealand's Threat Classification System as Nationally Endangered. The species is not listed in Australia, which maintains a list of, and provides protections to, species under their Environmental Protection and Biodiversity Conservation Act.

**Summary of Factors Affecting the DPS**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. These factors and their application to the NZ–AUS DPS of southern rockhopper penguin are discussed below.

*Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Terrestrial Habitat

There are few reports of destruction, modification, or curtailment of the terrestrial habitat of the southern rockhopper penguin. Analyses of large-scale declines of southern rockhopper penguins have uniformly ruled out that impacts to the terrestrial habitat have been a limiting factor to the species (Cunningham and Moors 1994, p. 34; Keymer *et al.* 2001, pp. 159–169; Clausen and Huin 2003, p. 394), and we have no reason to believe threats to the terrestrial habitat will emerge in the future. We, therefore, find that impacts to terrestrial habitat are not a threat to the species.

Climate-Related Changes in the Marine Environment

Reports of major decreases in both southern and northern rockhopper penguin numbers have been linked to sea surface temperature changes and other apparent or assumed oceanographic or prey shifts in the vicinity of breeding colonies (Cunningham and Moors 1994, pp. 27–36; Crawford *et al.* 2003, pp. 487–498; Clausen and Huin 2003, pp. 389–402). Within the NZ–AUS DPS at Campbell Island, a 94 percent decrease in southern rockhopper penguin numbers occurred between the early 1940s and 1985 (Cunningham and Moors 1994, p. 32). Cunningham and Moors (1994, pp. 27–36) compared the pattern of the penguin decline (from 800,000 breeding pairs in the early 1940s to 51,500 pairs in 1985) to patterns of sea surface temperature change. The authors concluded that drastic southern rockhopper penguin declines were related to increased sea surface temperature changes at Campbell Island. They found that peaks in temperature were related to the periods of largest decline in numbers within colonies, in particular in 1948–49 and 1953–54. One study colony rebounded in cooler temperatures in the 1960s, when temperatures reached a minimum of 47.5 °F (8.6 °C); however, with temperature stabilization at higher levels (mean 49.5 °F (9.7 °C)) in the 1970s, declines continued. Colony sizes have continued to decline into the 1990s (Taylor 2000, p. 54), and preliminary survey data indicate that numbers at Campbell Island continue to decline (Houston 2008, p. 1).

Cunningham and Moors (1994, p. 34) concluded that warmer waters most likely affected the diet of the Campbell Island southern rockhopper penguins. In the absence of data on the 1940's diet of Campbell Island southern rockhopper penguins, the authors compared the 1980s diet of the species at Campbell Island to southern rockhopper penguins elsewhere. They found the Campbell Island penguins eating primarily fish—southern blue whiting (*Micromesisteus australis*), dwarf codling (*Austrophycis marginata*), and southern hake (*Merluccius australis*)—while elsewhere southern rockhopper penguins were reported to eat mainly euphausiid crustaceans (krill) and smaller amounts of fish and squid. Based on this comparison of different areas, the authors concluded that euphausiids left the Campbell Island area when temperatures changed, forcing the southern rockhopper penguins to adopt an apparently atypical, and presumably less nutritious, fish diet. The authors concluded that this led to lower departure weights of chicks and contributed to adult declines (Cunningham and Moors 1994, p. 34).

Subsequent research, however, has not supported the theory that southern rockhopper penguins at Campbell Island switched prey as their "normal" euphausiid prey moved to cooler waters (Cunningham and Moors 1994, pp. 34–35). This hypothesis has been tested through stable isotope studies, which can be used to extract historical dietary information from bird tissues (e.g., feathers). In analyses of samples from the late 1800s to the present at Campbell Islands and Antipodes Islands, Thompson and Sagar (2002, p. 11) found no evidence of a shift in southern rockhopper penguin diet during the period of decline. They concluded that southern rockhopper penguins did not switch to a less suitable prey, but that overall marine productivity and the carrying capacity of the marine ecosystem declined beginning in the 1940s. With food abundance declining or food moving farther offshore or into deeper water, according to these authors, the southern rockhopper penguins maintained their diet over the long timescale, but were unable to find enough food in the less productive marine ecosystem (Thompson and Sagar 2002, p. 12).

Hilton *et al.* (2006, pp. 611–625) expanded the study of carbon isotope ratios in southern and northern rockhopper penguin feathers to most breeding areas, except those at the Falkland Islands and the tip of South America, to look for global trends that might help explain the declines observed at Campbell Island. They found no clear global-scale explanation for large spatial and temporal-scale rockhopper penguin declines. While they found general support for lower primary productivity in the ecosystems in which rockhopper penguins feed, there were significant differences between sites. There was evidence of a shift in diet to lower trophic levels over time and in warm years, but the data did not support the idea that the shift

toward lower primary productivity reflected in the diet resulted from an overall trend of rising sea temperatures (Hilton *et al.* 2006, p. 620). No detectable relationship between carbon isotope ratios and annual mean sea surface temperatures was found (Hilton *et al.* 2006, p. 620).

In the absence of conclusive evidence for sea surface temperature changes as an explanation for reduced primary productivity, Hilton *et al.* (2006, p. 621) suggested that historical top-down effects in the food chain might have caused a reduction in phytoplankton growth rates. Reduced grazing pressure resulting from the large-scale removal of predators from the subantarctic could have resulted in larger standing stocks of phytoplankton, which in turn could have led to lowered cell growth rates (which would be reflected in isotope ratios), with no effect on overall productivity of the system. Postulated top-down effects on the ecosystem of southern rockhopper penguins, which occurred in the time period before the warming, first noted in the original Cunningham and Moors (1994, p. 34) study, are the hunting of pinniped populations to near extinction in the 18th and 19th centuries and the subsequent severe exploitation of baleen whale (Balaenopteridae) populations in the 19th and 20th centuries (Hilton *et al.* 2006, p. 621). While this top-down theory may explain the regional shift toward reduced primary productivity, it does not explain the decrease in abundance of food at specific penguin breeding and foraging areas.

Hilton *et al.* (2006, p. 621) concluded that considerably more development of the links between isotopic monitoring of rockhopper penguins and the analysis of larger-scale oceanographic data is needed to understand effects of human activities on the subantarctic marine ecosystem and the links between rockhopper penguin demography, ecology, and environment.

Meteorologically, the events described for Campbell Island from the 1940s until 1985, including the period of oceanic warming, occurred after a record cool period in the New Zealand region between 1900 and 1935, the coldest period since recordkeeping began (Cunningham and Moors 1994, p. 35). These historical temperature changes have been attributed to fluctuations in the position of the Antarctic Polar Front caused by changes in the westerly-wind belt (Cunningham and Moors 1994, p. 35). Photographic evidence suggests that southern rockhopper penguin numbers may have been significantly expanding as the early 1900s cool period came to an end (Cunningham and Moors 1994, p. 33) and just before the rapid decrease in numbers.

Without longer-term data sets pertaining to fluctuations in numbers of southern rockhopper penguins at Campbell Island and longer temperature data records at a scale appropriate to evaluating impacts on this particular breeding colony, it is difficult to draw conclusions on the nature or cause of the marine-based threat. It is reasonable to conclude, however, that the situation at Auckland and Antipodes Islands is similar to that on Campbell Island, given the shared location (on the Campbell Plateau) and similar population trends on these islands.

We found no information on the causes of the population decline on Macquarie Island, and we have not identified sea temperature or other oceanographic data on an appropriate scale to evaluate historical trends or make predictions on future trends at this site. Macquarie Island is located on Macquarie Ridge, south of the Campbell Plateau. Although oceanographic conditions surrounding Macquarie Island differ from those on Campbell Plateau, air temperatures at Macquarie Island are reported to be rising (Adamson *et al.* 1988, p. 107), and the island is reported to have experienced a marked shift in its climate since 1970 (Adams 2009, p. 1). Therefore, it is reasonable to conclude, given the relationships between climate and oceanographic conditions, that the marine environment near the island, on which breeding penguins depend for food, is also changing. Changes in the marine environment, and possible shifts in food abundance or distribution in the marine environment, have been cited as leading to historical and present-day declines on Campbell Island (Cunningham and Moors 1994, p. 32), and in other areas of the species' range (Crawford *et al.* 2003, p. 496; Crawford and Cooper 2003, p. 415; Clausen and Huin 2003, p. 394). Estimates from 2006–07 indicate 32,000–43,000 breeding pairs at Macquarie Island (BLI 2008, p. 2), an order of magnitude lower than earlier categorical estimates. Given that the earlier estimate is categorical, quantitative data on trends on this island are not available. However, expert opinion suggests a long-term declining trend on the island. Gales *et al.* (2010, p. 93) state that there are no reliable data on trends, but categorize the population, based on anecdotal observations, as having decreased. Hilton and Otley (2010, pp. 32–33) acknowledge the lack of quantitative information on the population but categorize the long-term population trend as decreasing. Woehler (2009, pp. 1–2) describes the population as possibly stable following a decrease during, approximately, the last 30 years. Given these expert opinions on long-term trends, Woehler's uncertainty about the current stability of the population, and a lack of evidence indicating the population is currently stable, we rely on these expert opinions to qualify the general long-term population trend on the island as decreasing. In the absence of any major factors on land, given the evidence for marine-based declines within the Campbell Plateau portion of the DPS and elsewhere in the species' range, and given we have no information indicating a reversal or abatement of the causes of these declines, the best available information indicates that some change in the oceanographic ecosystem has led to past declines and will likely lead to future declines in the southern rockhopper penguin population on Macquarie Island.

Summary of Factor A

Based on our review of the best available information, we conclude that changes to the marine environment, which influence the southern rockhopper penguin, have affected the NZ–AUS DPS of the species. In the absence of identification of other significant threat factors and in light of the best available scientific information indicating that prey availability, productivity, or sea temperatures are affecting southern rockhopper penguins within the DPS, we find that changes to the marine environment are a threat to southern rockhopper penguins throughout the NZ–AUS DPS.

*Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Southern rockhopper penguins are not commercially traded. They are not listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and we found no records of trade on the CITES trade database (*http://www.unep-wcmc.org/citestrade*). Tourism and other human disturbance impacts are reported to have little effect on the species (BLI 2007, p. 3). All New Zealand subantarctic islands, including Campbell, Auckland, and Antipodes Islands, are nationally protected and inscribed as New Zealand Subantarctic Islands World Heritage sites; thus, human visitation of the islands is tightly restricted at all sites where penguins occur (Taylor 2000, p. 54; BLI 2007, p. 4; United Nations Environmental Program, World Conservation Monitoring Center (UNEP WCMC)

2008a, p. 5). Macquarie Island is also a World Heritage site with limited and controlled visitation (UNEP WCMC 2008b, p. 6).

We have no information indicating overutilization for commercial, recreational, scientific, or educational purposes is a threat to any portion of the NZ–AUS DPS of southern rockhopper penguins, nor any reason to believe that levels of utilization will increase in the future.

*Factor C: Disease or Predation*

Disease

Information on disease in the NZ–AUS DPS of southern rockhopper penguin is limited. We found no information on the occurrence of disease on Auckland, Antipodes, or Macquarie Islands. Investigations have ruled out disease as a significant factor in major population declines at Campbell Island in the 1940s and 1950s. De Lisle *et al.* (1990, pp. 283–285) isolated avian cholera (*Pasteurella multocida*) from the lungs of dead chicks and adults sampled during the year of decline 1985–86 and the subsequent year 1986–87. They were unable to determine whether this was a natural infection in southern rockhopper penguins or one that had been introduced through the vectors of rats, domestic poultry, cats (*Felis catus*), dogs (*Canis familiaris*), or livestock that have been prevalent on the island in the past. While the disease was isolated in four separate colonies along the coast of Campbell Island, and there was evidence of very limited mortality from the disease, the authors concluded there was no evidence that mortality from this pathogen on its own may have caused the decline in numbers at Campbell Island (Cunningham and Moors 1994, p. 34). Assays for a variety of other infectious avian diseases found no antibody responses in southern rockhopper penguins at Campbell Island (de Lisle *et al.* 1990, pp. 284–285).

In summary, we have no information indicating disease is a threat in any portion of the NZ–AUS DPS of southern rockhopper penguins, nor any reason to believe that levels of disease will increase in the future.

Predation by Native Species

Several native predators, such as skuas (*Catharacta* spp.), giant petrels (*Macronectes* spp.), fur seals (*Arctocephalus* spp.), and sea lions (*Otaris* spp.), prey on rockhopper penguins (Quillfeldt 2010, p. 50). We found no information indicating predation by marine mammals is a threat to the NZ–AUS DPS of southern rockhopper penguins. Some studies, including some on penguins, have shown that avian predation is higher at the edges of bird colonies (Gilchrist 1999, pp. 21–29; Emslie *et al.* 1995, pp. 317–327; Spear 1993, pp. 399–414; Tenaza 1971, pp. 81–92). It has been suggested that, as a result, relative predation rates will increase with colony fragmentation and shrinkage due to the relationship between perimeter and area, and, therefore, that the population trajectory of small and fragmented colonies are more likely to be effected by avian predation (Jackson *et al.* 2005; Quillfeldt 2010, p. 50). Given the large decline in the numbers of southern rockhopper penguins on islands within the DPS, it is possible that avian predators may be having an increasing effect on the southern rockhopper population there. However, we found no information indicating that relative avian predation rates are increasing within the NZ–AUS DPS. We, therefore, find that predation by native birds and mammals is not a threat to the NZ–AUS DPS.

Predation by Introduced Species

At Campbell Island in New Zealand, de Lisle *et al.* (1990, p. 283) ruled out Norway rats (*Rattus norvegicus*), which were present on the island at the time of precipitous declines, as a factor in those declines. Quillfeldt (2010, pp. 50–51) reports that there is little indication that mice, which occur on Auckland and Antipodes Islands, or Norway rats, which occur on Macquarie Island, prey on rockhopper penguins. Feral cats are present on Auckland Island, but have not been observed preying on chicks there (Taylor 2000, p. 55), and Dilks (1979, p. 65) found no rockhopper remains in the stomachs of feral cats on Campbell Island. Although it was suggested that introduced predators may affect breeding on Macquarie Island (Ellis *et al.* 1998, p. 49; Quillfeldt 2010, p. 50), no information was provided to support this idea. Therefore, we find that predation by introduced species is not a threat to the NZ–AUS DPS.

Summary of Factor C

We found no information indicating disease or predation is a threat to southern rockhopper penguins in the NZ–AUS DPS. Therefore, based on our review of the best available information we find that neither disease nor predation is a threat to the NZ–AUS DPS of southern rockhopper penguin in any portion of its range, and no information is available that suggests this will change in the future.

*Factor D: The Inadequacy of Existing Regulatory Mechanisms*

The majority of subantarctic islands are under protected status. All New Zealand subantarctic islands, including Campbell, Auckland, and Antipodes Islands, are nationally protected and inscribed as the New Zealand Subantarctic Islands World Heritage sites. Human visitation of the islands is tightly restricted at all sites where penguins occur (Taylor 2000, p. 54; BLI 2007, p. 4; UNEP WCMC 2008a, p. 5). In Australia, Macquarie Island is also a World Heritage site with limited, controlled visitation and with management plans in place (UNEP WCMC 2008b, p. 6).

Based on our review of the existing regulatory mechanisms in place for each of these areas and our analysis of other threat factors, we find that existing regulatory mechanisms regarding the conservation of the southern rockhopper penguin (BLI 2007, p. 4; Ellis *et al.* 1998, pp. 49, 53) are adequate throughout the DPS. There is no information available to suggest these regulatory mechanisms will change in the future.

*Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species*

Oil spills

We examined the possibility that oil spills may impact southern rockhopper penguins within the NZ–AUS DPS. Such spills, should they occur and not be effectively addressed, can have direct effects on marine seabirds such as penguins.

We are aware of only one report of an oil spill incident within the NZ–AUS DPS. In December 1987, the Australian Antarctic Division (AAD) resupply vessel, the *Nella Dan,* ran aground in Buckles Bay, while transferring fuel to the Australian National Antarctic Research Expedition (ANARE) station on the northern end of Macquarie Island. Approximately 270,000 liters (71,326 gallons) of mostly light marine diesel fuel were released into the sea (Parks and Wildlife Service (Australia) 2006, pp. 122–123). The only reported impacts we found were to tidal and intertidal invertebrates in the Bay. It has been noted that an offshore oil spill at Macquarie Island, especially on the west (windward) side of the island, could be extremely serious given the abundance of shore-dwelling wildlife and the difficulties of conducting response operations in an isolated location where weather and sea conditions are usually severe. Australian Antarctic Division vessels and tourist vessels usually anchor one or more kilometers from

shore on the leeward side of the island, which reduces the likelihood of an oil spill reaching the coast, although a fishing vessel regularly operates off the west side of the island (Parks and Wildlife Service (Australia), pp. 122–123). Parks and Wildlife Service (Australia) (2006, pp. 122–123) state that a Macquarie Island Station Oil Spill Contingency Plan provides policies and procedures for dealing with nearshore oil spills in the waters of Buckles Bay, but that it would be nearly impossible to contain an oil spill anywhere else. The National Plan to Combat Marine Oil Spills developed by the Australian Maritime Safety Authority concludes that, in the event of a spill, little could be done at Macquarie Island except for attempting to clean oil off critical species (Parks and Wildlife Service (Australia) 2006, pp. 122–123).

We found no information on oil spills within the New Zealand waters of the DPS. However, New Zealand has in place the New Zealand Marine Oil Spill Response Strategy, which provides the overall framework to mount a response to marine oil spills that occur within New Zealand's area of responsibility. The aim of the strategy is to minimize the effects of oil on the environment and human safety and health. The National Oil Spill Contingency Plan promotes a planned and nationally coordinated response to any marine oil spill that is beyond the capability of a local regional council or outside the region of any local council (Maritime New Zealand 2007, p. 1). Rapid containment of spills in remote areas and effective triage response under this plan have shown these to be effective regulatory mechanisms for containing spills and minimizing impacts to wildlife (New Zealand Wildlife Health Center 2007, p. 2; Taylor 2000, p. 94). For instance, outside the range of the NZ–AUS DPS of southern rockhopper penguin, the fishing Vessel *Seafresh 1* sank in Hanson Bay on the east coast of Chatham Island in March 2000, and released 66 tons (60 tonnes (t)) of diesel fuel. Rapid containment of the oil at this very remote location prevented any wildlife casualties (New Zealand Wildlife Health Center 2007, p. 2). The same source reported that in 1998, the fishing vessel *Don Wong 529* ran aground at Breaksea Islets, off Stewart Island. Approximately 331 tons (300 t) of marine diesel was spilled along with smaller amounts of lubricating and waste oils. With favorable weather conditions and establishment of triage response, no wildlife casualties of the pollution event were discovered (Taylor 2000, p. 94).

We recognize that an oil spill near a breeding colony could potentially have local effects on the NZ–AUS DPS of southern rockhopper penguin, particularly at Macquarie Island, where the ability to contain a spill may be limited. However, there are an estimated 89,600–101,500 breeding pairs of southern rockhopper penguins spread among four different island groups within the DPS, with an estimated 32,000–43,000 breeding pairs on Macquarie Island. Consequently, we find that oil and chemical spills do not rise to the level of threatening the species within the DPS given: (1) The size and distribution of breeding colonies among the four island groups within the DPS; (2) subantarctic breeding islands within the DPS are remote from shipping activity; (3) the frequency and severity of previous spills are low; (4) New Zealand has an effective New Zealand Marine Oil Spill Response Strategy; and (5) ships visiting Macquarie Island usually anchor well off the leeward coast of the island. Therefore, we find that oil spills are not a threat to the southern rockhopper penguin within the NZ–AUS DPS. Furthermore, we found no information indicating that the frequency or severity of oil spills in any portion of the species' range will increase in the future, or that existing containment capabilities will be weakened. Therefore, we conclude that oil pollution from oil spills is not a threat to the species in any portion of its range now or in the foreseeable future.

Fisheries

Fishing Bycatch

Incidental mortality of rockhopper penguins by fisheries operations does not appear to be significant. Munro (2010, p. 57) reported that rockhopper penguins are not particularly susceptible to mortality as bycatch, and that bycatch monitoring systems very rarely report mortality of rockhopper penguins. Southern rockhopper penguins could potentially be caught in trawl nets, but there are no records of their being caught in New Zealand subantarctic waters by this fishing method (Taylor 2000, p. 94), nor do we have information suggesting they are caught in Australian waters by this fishing method.

Competition With Fisheries

The Action Plan for Seabird Conservation in New Zealand (Taylor 2000, p. 94) reported that competition from fisheries may be a potential threat to southern rockhopper penguins, as there is a major fishery for southern blue whiting, a common prey species for this penguin in New Zealand subantarctic waters. However, no additional information was given, and we found no information suggesting impacts, or potential impacts, to southern rockhopper penguins from competition with any fisheries in New Zealand or Australian waters. Munro (2010, p. 57), in his assessment of fisheries interactions with rockhopper penguin, notes that fisheries within New Zealand and Australia are well regulated. He also does not identify competition with fisheries within the NZ–AUS DPS (the Pacific Ocean region) as a concern. Munro (2010, p. 57) states, however, that effects of fishery catch on marine ecosystems and apex predators like rockhopper penguins are not known in any of the areas where rockhopper penguins forage.

Summary of Fisheries

In our review of fisheries activities, we found no reports of documented fisheries interactions, or impacts from competition for prey species, between southern rockhopper penguins and commercial fisheries within the NZ–AUS DPS of the species. Nor did we find documentation of fisheries bycatch of the species. While fisheries activities have the potential to compete for the prey of southern rockhopper penguins, there is no information indicating competition with fisheries is a threat to the DPS of the species. Therefore, we find that fisheries interactions with southern rockhopper penguins are not a threat to species in any portion of the NZ–AUS DPS, and we have no reason to believe this will change in the future.

Summary of Factor E

On the basis of analysis of potential impacts from oil spills and fisheries, we find that other natural or manmade factors are not threats to the southern rockhopper penguin in any portion of the NZ–AUS DPS, now or in the foreseeable future.

**NZ–AUS DPS Finding**

We identified a number of potential stressors to this species within the NZ–AUS DPS, including: (1) Changes in the marine environment, (2) human use and disturbance, (3) disease and predation, and (4) oil spills and competition with fisheries. To determine whether these stressors individually or collectively rise to a "threat" level such that the southern rockhopper penguin is in danger of extinction throughout the DPS, or likely to become so within the foreseeable future, we first considered whether the stressors to the species were causing long-term, population-

scale declines in penguin numbers, or were likely to do so in the future.

Historical numbers of southern rockhopper penguins for the NZ–AUS DPS may have been as high as 960,000 breeding pairs; they are currently estimated at 89,600–101,500 breeding pairs. Significant historical declines have been reported, in particular, at Campbell Island, where a decline of 94 percent was recorded between the early 1940s and 1985; at Antipodes Islands, where a decline of 94 percent was recorded; and at Auckland Islands, where the numbers halved between 1983 and 1990. At Macquarie Island, which represents 32 to 48 percent of this DPS, southern rockhopper penguin numbers were recently estimated to be an order of magnitude lower than previous categorical estimates, and expert opinion indicates a long-term declining trend in population on this island. Current quantitative data is not available to indicate whether, and to what extent, numbers throughout this DPS continue to decline, but qualitative evidence indicates that numbers continue to decline throughout the DPS.

In our five-factor analysis, we did not find evidence of any significant changes to the terrestrial habitat of the southern rockhopper penguin. Changes to the marine environment, however, are cited as factors that have led to historical or recent large declines within the Campbell Plateau portion of the range, and it is reasonable to conclude that changes in the marine environment are the cause of population affects at Macquarie Island. We have no reason to believe these changes in the marine environment will be ameliorated in the future; therefore, we find it reasonably likely that the effects on the species in this DPS will continue at current levels or potentially increase. On the basis of the best available scientific and commercial information, including evidence of precipitous decreases of penguin numbers in this DPS, we find that the present or threatened destruction, modification, or curtailment of its marine habitat or range is a threat to the southern rockhopper penguin throughout the NZ–AUS DPS.

On the basis of our five-factor analysis of the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; and inadequacy of existing regulatory mechanisms are not threats to the southern rockhopper penguin in any portion of the NZ–AUS DPS. On the basis of information on fisheries and oil spills, we find that other natural or manmade factors are also not a threat to the southern rockhopper penguin in any portion of the NZ–AUS DPS.

Having determined that changes in the marine environment are a threat to the NZ/AUS DPS of southern rockhopper penguin, we next determined whether changes in the marine environment rises to a "threat" level such that the DPS is in danger of extinction ("endangered" under the Act). We considered the historical data to identify any relevant existing trends that might allow for reliable prediction of the future (in the form of extrapolating the trends). We also considered whether we could reliably predict any future events (not yet acting on the species and therefore not yet manifested in a trend) that might affect the status of the species. The available data support a conclusion that there is a current overall declining trend in population numbers throughout the DPS as a result of changes in the marine environment. While the oceanographic factors contributing to declines within the DPS are not clearly understood, they appear to relate to changes in sea surface temperatures or to changes in marine productivity at scales affecting individual colonies or regions, causing reductions in food availability that may have occurred in short periods or extended over periods of years. Current qualitative information indicates that colonies are still in decline, although the rate of that decline is undocumented. According to the most recent estimates, there are approximately 90,000 to 100,000 breeding pairs of southern rockhopper penguins within the DPS, distributed over four breeding islands that are located in two different oceanographic regions (Campbell Plateau and Macquarie Ridge). Because declines appear to relate to changes in the marine environment at scales affecting individual colonies or regions, and the timing of these declines appears to vary, we are unable to predict the rate of current or future declining trends at each of these breeding locations. However, the presence of four breeding areas within this DPS provides a measure of resiliency against changes in the marine environment that may cause severe localized population declines within the DPS. We conclude that the current number of breeding pairs of southern rockhopper penguin within the NZ/AUS DPS and their distribution over four breeding locations provides resiliency to the population against the effects of marine-based threats such that the DPS is not currently in danger of extinction.

Next, we considered whether changes in the marine environment pose such a threat that the DPS is likely to become in danger of extinction in the foreseeable future ("threatened" under the Act). Though it is possible the magnitude of current threats may increase in the future, there is no evidence that any of the stressors or threats are growing in magnitude. Thus, the foreseeable future includes consideration of the ongoing effects of current threats at comparable levels on the viability of the DPS.

It is reasonably likely that changes in the marine environment will continue to affect the DPS at least at current levels, further reducing the population numbers. Given the magnitude of declines recorded in the Campbell Plateau region of the DPS during approximately the past 65 years, lower population numbers within the DPS are reasonably likely in the foreseeable future. Lower population numbers would cause this DPS to be more vulnerable to threats from changes in the marine habitat, and more vulnerable to potential impacts from oil spills and other random or catastrophic perturbations within the ecosystem. Loss of one or more of the four breeding concentrations, two of which number less than 4,000 breeding pairs, would significantly reduce the resiliency and redundancy of populations in this DPS and increase the impact of random or catastrophic perturbations on remaining population numbers in the DPS.

We conclude that a reduction in range or number of southern rockhopper penguins within the NZ/AUS DPS is likely in the foreseeable future, and that this reduction is likely to increase its vulnerability to changes in the marine environment and random or catastrophic perturbations to the point where the viability of the DPS would be in question. Therefore, on the basis of our analysis of the best available scientific and commercial information, we conclude that the southern rockhopper penguin throughout the range of the NZ–AUS DPS is likely to become in danger of extinction in the foreseeable future, and thus should be designated as a threatened species under the Act.

*Significant Portion of the Range Analysis*

Having determined that the NZ–AUS DPS of southern rockhopper penguin meets the definition of threatened throughout its range, we must next consider whether there are any significant portions of the range of the species within the NZ–AUS DPS that meet the definition of endangered. The

Act defines an endangered species as one "in danger of extinction throughout all or a significant portion of its range," and a threatened species as one "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." For the purpose of this analysis, we considered a portion of the southern rockhopper penguin DPS's range to be significant if is important to the conservation of the DPS because it contributes meaningfully to the representation, resiliency, or redundancy of the DPS. For a contribution to be meaningful, its loss would at least have to result in a decrease in the ability to conserve the DPS.

We found that changes in the marine habitat threaten the species throughout the DPS. Although declines on the Campbell Plateau have been quantified to some extent, the lack of quantitative population trend information for Macquarie Island precludes a comparison of the declines in these two portions of the range. Further, we found no information indicating that the threat posed to the NZ–AUS DPS of southern rockhopper penguins by changes in the marine habitat are of greater magnitude or extent in either of these portions or any other portion of the range of the DPS. Therefore, we conclude that the threats to the species are essentially uniform throughout the DPS, and no portion of the NZ–AUS DPS is currently in danger of extinction.

*Available Conservation Measures*

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages conservation actions by Federal governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that the NZ–AUS DPS of the southern rockhopper penguin is not native to the United States, critical habitat is not being designated for this species under section 4 of the Act.

Section 8(a) of the Act authorizes limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions would be applicable to the NZ–AUS DPS of the southern rockhopper penguin. These prohibitions, under 50 CFR 17.21 and applicable to threatened species through 50 CFR 17.31, make it illegal for any person subject to the jurisdiction of the United States to "take" (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas, import or export, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale in interstate or foreign commerce, any threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species.

## Required Determinations

*National Environmental Policy Act (NEPA)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited

A complete list of the references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (*see* **FOR FURTHER INFORMATION CONTACT**).

## Author

The authors of this rule are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (*see* **FOR FURTHER INFORMATION CONTACT**).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding a new entry for "Penguin, southern rockhopper" in alphabetical order under BIRDS to the List of Endangered and Threatened Wildlife as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| BIRDS | | | | | | | |
| * | * | * | * | * | * | | * |
| Penguin, southern rockhopper. | *Eudyptes chrysocome* | Southern Ocean, South Atlantic Ocean, South Pacific Ocean, Southern Indian Ocean. | New Zealand-Australia distinct population segment, associated with the Campbell Plateau and Macquarie Island. | T | 784 | NA | NA |
| * | * | * | * | * | * | | * |

* * * * *

Dated: February 2, 2011.

**Rowan W. Gould,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–3732 Filed 2–18–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 001005281–0369–02]**

**RIN 0648–XA220**

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

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

**ACTION:** Temporary rule; trip limit reduction.

**SUMMARY:** NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

**DATES:** Effective 6 a.m., local time, February 22, 2011, until 12:01 a.m., local time, March 1, 2011, unless changed by further notification in the **Federal Register**.

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

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

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP (65 FR 41015, July 3, 2000) NMFS implemented a commercial quota of 3.87 million lb (1.76 million kg) for the Atlantic migratory group of Spanish mackerel. Atlantic migratory group Spanish mackerel are divided into a northern and southern zone for management purposes. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4′N. lat., which is a line directly east from the Miami-Dade/Monroe County, Florida, boundary.

For the southern zone, seasonally variable trip limits are based on an adjusted quota of 3.62 million lb (1.64 million kg). The adjusted quota is calculated to allow continued harvest in the southern zone at a set rate for the remainder of the fishing year, February 28, 2011, in accordance with 50 CFR 622.44(b)(2). Beginning December 1, the trip limit is unlimited on weekdays and limited to 1,500 lb (680 kg) of Spanish mackerel per day on weekends. When 75 percent of the adjusted quota of Atlantic migratory group Spanish mackerel is taken until 100 percent of the adjusted quota is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a permitted vessel in amounts exceeding 1,500 lb (680 kg) per day.

NMFS has determined that 75 percent of the adjusted quota for Atlantic group Spanish mackerel has been taken. Accordingly, the 1,500-lb (680-kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time, February 22, 2011, until 12:01 a.m., local time, March 1, 2011, unless changed by further notification in the **Federal Register**.

### Classification

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

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

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

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

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

Dated: February 16, 2011.

**Margo Schulze-Haugen,**

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

[FR Doc. 2011–3880 Filed 2–16–11; 4:15 pm]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 0910131362–0087–02]**

**RIN 0648–XA235**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Harvesting Pacific Cod for Processing by the Inshore Component in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2011 Pacific total allowable catch (TAC) apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 16, 2011, through 1200 hrs, A.l.t., September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2011 Pacific cod TAC apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA is 12,304 metric tons (mt), as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010) and inseason adjustment (76 FR 469, January 5, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2011 Pacific cod TAC apportioned to vessels harvesting Pacific cod for processing by the inshore component of the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,304 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by vessels harvesting Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 15, 2011.

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

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

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

Dated: February 16, 2011.

**Margo Schulze-Haugen,**

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

[FR Doc. 2011–3881 Filed 2–16–11; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 76, No. 35
Tuesday, February 22, 2011

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AM33**

### Prevailing Rate Systems; Redefinition of the Northeastern Arizona and Colorado Appropriated Fund Federal Wage System Wage Areas

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a proposed rule that would redefine the geographic boundaries of the Northeastern Arizona and Southern Colorado appropriated fund Federal Wage System (FWS) wage areas. The proposed rule would redefine Dolores, Montrose, Ouray, San Juan, and San Miguel Counties, CO, and the Curecanti National Recreation Area portion of Gunnison County, CO, from the Southern Colorado wage area to the Northeastern Arizona wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the counties proposed for redefinition to a nearby FWS survey area. No other changes are proposed for the Northeastern Arizona and Southern Colorado FWS wage areas.

**DATES:** We must receive comments on or before March 24, 2011.

**ADDRESSES:** Send or deliver comments to Jerome D. Mikowicz, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov*; or *FAX:* (202) 606–4264.

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM) is issuing a proposed rule to redefine the Northeastern Arizona and Southern Colorado appropriated fund Federal Wage System (FWS) wage areas. This proposed rule would redefine Dolores, Montrose, Ouray, San Juan, and San Miguel Counties, CO, and the Curecanti National Recreation Area portion of Gunnison County, CO, from the Southern Colorado wage area to the Northeastern Arizona wage area.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Montrose County is currently defined to the Southern Colorado area of application. Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that Montrose County would be more appropriately defined as part of the Northeastern Arizona area of application. When measuring to cities, the distance criterion favors the Northeastern Arizona wage area. When measuring to host installations, the distance criterion favors the Southern Colorado wage area. All other criteria are indeterminate. Although a standard review of regulatory criteria shows that most factors are indeterminate, distance to the closest cities does favor the Northeastern Arizona wage area. Based on this analysis, we recommend that Montrose County be redefined to the Northeastern Arizona wage area.

Gunnison County is currently defined to the Southern Colorado area of application. Our analysis of the regulatory criteria indicates that Gunnison County is appropriately defined as part of the Southern Colorado area of application. The distance criterion favors the Southern Colorado wage area. All other criteria are indeterminate. Based on the mixed nature of our regulatory analysis findings, there is no clear indication that Gunnison County should be placed in a different FWS wage area. However, the Department of the Interior informs us that the Black Canyon of the Gunnison National Park in Montrose County and the Curecanti National Recreation Area in Gunnison County are co-managed and that the majority of employees who service the Black Canyon of the Gunnison National Park have duty stations at the Curecanti National Recreation Area. The two parks are adjacent, with the Curecanti National Recreation Area sharing its western boundary with the Black Canyon of the Gunnison National Park. Because we are recommending that Montrose County be redefined to the Northeastern Arizona wage area, and because of the organizational relationship and geographic proximity of these two parks, we recommend that the portion of Gunnison County occupied by the Curecanti National Recreation Area be part of the Northeastern Arizona wage area. This change would ensure that FWS employees at the Black Canyon of the Gunnison National Park and the Curecanti National Recreation Area are paid from the same wage schedule. The remaining portion of Gunnison County would continue to be part of the Southern Colorado wage area. We believe the mixed nature of our regulatory analysis findings indicates that the remaining locations in Gunnison County remain appropriately defined to the Southern Colorado wage area, with distance being the deciding factor.

Dolores County is currently defined to the Southern Colorado area of application. Our analysis of the regulatory criteria indicates that Dolores County would be more appropriately defined as part of the Northeastern Arizona area of application. The distance criterion for Dolores County favors the Northeastern Arizona wage area more than the Southern Colorado wage area. The commuting patterns criterion slightly favors the Northeastern Arizona wage area. All other criteria are indeterminate. Based on this analysis, OPM proposes to redefine Dolores County to the Northeastern Arizona area of application.

Ouray, San Juan, and San Miguel Counties are currently defined to the Southern Colorado area of application. Our analysis of the regulatory criteria indicates that Ouray, San Juan, and San Miguel Counties would be more appropriately defined as part of the Northeastern Arizona area of application. The distance criterion favors the Northeastern Arizona wage area more than the Southern Colorado

wage area. All other criteria are indeterminate. Since the distance criterion indicates that Ouray, San Juan, and San Miguel Counties are closer to the Northeastern Arizona survey area, we recommend that these three counties be redefined to the Northeastern Arizona wage area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations. FPRAC recommended no other changes in the geographic definitions of the Northeastern Arizona and Southern Colorado wage areas.

**Regulatory Flexibility Act**

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix C to subpart B is amended by revising the wage area listings for the Northeastern Arizona and Colorado wage areas to read as follows:

### Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

**ARIZONA**

**Northeastern Arizona**

*Survey Area*

Arizona:
- Apache
- Coconino
- Navajo

New Mexico:
- McKinley
- San Juan

*Area of Application. Survey Area plus:*

Colorado:
- Dolores
- Gunnison (Only includes the Curecanti National Recreation Area portion)
- La Plata
- Montezuma
- Montrose
- Ouray
- San Juan
- San Miguel

Utah:
- Kane
- San Juan (Does not include the Canyonlands National Park portion)

* * * * *

**COLORADO**

* * * * *

**Southwestern Colorado**

*Survey Area*

Colorado:
- El Paso
- Pueblo
- Teller

*Area of Application. Survey Area plus:*

Colorado:
- Alamosa
- Archuleta
- Baca
- Bent
- Chaffee
- Cheyenne
- Conejos
- Costilla
- Crowley
- Custer
- Delta
- Fremont
- Gunnison (Does not include the Curecanti National Recreation Area portion)
- Hinsdale
- Huerfano
- Kiowa
- Kit Carson
- Las Animas
- Lincoln
- Mineral
- Otero
- Pitkin
- Prowers
- Rio Grande
- Saguache

* * * * *

[FR Doc. 2011–3769 Filed 2–18–11; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1214

**[Document No. AMS–FV–10–0008–PR–1A]**

**RIN 0581–AD00**

## Proposed Christmas Tree Promotion, Research, and Information Order; Extension of Comment Period on Proposed Establishment of a Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Reopening and extension of comment period.

**SUMMARY:** Notice is hereby given that the comment period on the proposed establishment of an industry-funded promotion, research, and information program for fresh cut Christmas trees is reopened and extended. The comment period is also reopen and extended for the new Christmas tree information collection requirements by the Office of Management and Budget (OMB) for the operation of the proposed program. The proposed Christmas Tree Promotion, Research, and Information Order (Proposed Order), was submitted to the Department of Agriculture (Department) by the Christmas Tree Checkoff Task Force, an industry wide group of producers and importers that support this proposed program.

**DATES:** Comments must be received by March 9, 2011. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by March 9, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244; *fax:* (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

Pursuant to PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250–0244; *telephone:* (301) 334–2891; or *facsimile:* (301) 334–2896; or *e-mail: Patricia.Petrella@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** A proposed rule was issued on November 2, 2010, and published in the **Federal Register** on November 8, 2010, (75 FR 68512). That rule proposed the establishment of an industry-funded promotion, research, and information program for fresh cut Christmas trees.

USDA was contacted by a congressman and received several letters from North Carolina growers requesting the comment period be reopened and extended to allow additional time to submit their comments. The growers also expressed that the comment period was open during their busiest time of the year.

USDA is reopening the comment period an additional 15 days to allow interested persons more time to review the proposed rule, perform a complete analysis, and submit written comments.

This notice is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Dated: February 16, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–3934 Filed 2–18–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

## 10 CFR Parts 430 and 431

**[Docket No. EE–2008–BT–STD–0012]**

## Equipment Price Forecasting in Energy Conservation Standards Analysis

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

**ACTION:** Notice of data availability; request for comment.

**SUMMARY:** The U.S. Department of Energy (DOE) seeks information related to potential technical improvements its energy conservation standards rulemaking analysis, and requests comment on corresponding revisions to the analysis for energy conservation standards for refrigerators, refrigerator-freezers and freezers.

**DATES:** Written comments and information are requested on or before March 24, 2011.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EE–2008–BT–STD–0012, by any of the following methods:

- *E-mail:* to *ResRefFreez–2008–STD–0012@hq.doe.gov.* Include EE–2008–BT–STD–0012 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Equipment Price Forecasting in Energy Conservation Standards Analysis, EE–2008–BT–STD–0012, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking.

*Docket:* For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information may be sent to Mr. John Cymbalsky, 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:* 202–586–4617. *E-mail: Lucas.Adin@ee.doe.gov.*

In the office of the General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71,1000 Independence Ave., SW., Room 6A–179, Washington, DC 20585. *Telephone:* 202–586–7796; *E-mail: Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** On January 18, 2011, the President issued Executive Order (the Order) 13563, meant to ensure that regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. Among other things, the Order requires agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, the regulation imposes the least burden on society consistent with obtaining the regulatory objectives, and that in choosing among alternative regulatory approaches, agencies choose those approaches that maximize net benefits.

The Order also contains provisions that bear on the analysis of benefits and costs. It provides that agencies must "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In subsequent guidance on February 2, 2011, the Office of Information and Regulatory Affairs explained that such techniques include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

In light of the Order, DOE has examined its processes for establishing energy efficiency standards for consumer products and commercial equipment. In examining its analytical approaches for developing these regulations, DOE has developed a supplemental approach to help quantify the impacts flowing from the setting of efficiency levels for a given product or equipment. This approach is intended to improve accuracy in the assessment of future compliance costs. As part of this notice, DOE is soliciting comment on the potential inclusion of this approach for its future rulemaking activities. Additionally, DOE is seeking comment on the merits of adopting this approach within the context of its ongoing rulemaking to set standards for refrigerators, refrigerator-freezers, and

freezers (collectively, "refrigeration products").

**Price Forecast Methodology**

One of the key estimates that DOE currently makes during the analysis of energy conservation standards is the impact of efficiency regulations on equipment price. DOE uses its engineering analysis—which determines a given appliance's cost as a function of its efficiency (through the development of cost-efficiency curves)—as the basis for estimating these equipment price impacts. The technology costs derived in the engineering analyses form the basis for product prices used in the national impact analysis that estimates regulatory impacts for products sold over the 30-year analysis period. Consequently, the price projections affect the economic impacts calculated for any potential energy conservation standard levels.

Currently, DOE's analyses assume that the manufacturer costs and retail prices of products meeting various efficiency levels remain fixed, in real terms, after the compliance date and throughout the period of the analysis. This assumption is conservative. Examination of historical price data for certain appliances and equipment that have been subject to energy conservation standards indicates that the assumption of constant real prices and costs may, in many cases, over-estimate long-term appliance and equipment price trends. Economic literature and historical data suggest that the real costs of covered products and equipment may in fact trend downward over time according to "learning" or "experience" curves. A draft paper, "Using the Experience Curve Approach for Appliance Price Forecasting," posted on the DOE Web site along with this notice at *http://www.eere.energy.gov/buildings/appliance_standards,* provides a summary of the data and literature currently available to DOE that is relevant to price forecasts for selected appliances and equipment.

In light of these data and DOE's aim to improve the accuracy and robustness of its analyses, DOE is considering assessing future costs by incorporating learning over time, consistent with the analysis in the currently available literature, in its analysis of regulatory options in the energy conservation standards for refrigeration products, in an attempt to create a more accurate and robust forecast of the pricing effects that accompany amended energy efficiency standards for these products. The consequences of this approach are outlined below. DOE is also considering applying this approach generally to its energy conservation standards-related analyses for appliance and commercial equipment.

DOE seeks comment on the merits of this approach, particularly with respect to its application to an analysis of potential energy efficiency standards for refrigeration products and the data presented in this notice.

In addition, DOE requests information regarding the potential for improving the methodology for projecting the cost of efficiency improvements over the analysis period in general. DOE provides additional background in the following paragraphs and seeks input on three broad categories: (1) Data sources; (2) potential methodologies; and (3) procedural issues.

**Background**

*Forecast Method.* An extensive economic literature discusses the "learning" or "experience" curve phenomenon, typically based on observations in the manufacturing sector.[1] In the experience curve method, the real cost of production is related to the cumulative production or "experience" with a product. To explain the empirical relationship, the theory of technology learning is used to substantiate a decline in the cost of producing a given product as firms accumulate experience with the technology. A common functional relationship used to model the evolution of production costs in this case is:

$$Y = aX^{-b},$$

where $a$ is an initial price (or cost), $b$ is a positive constant known as the learning rate parameter, $X$ is cumulative production, and $Y$ is the price as a function of cumulative production. Thus, as experience (production) accumulates, the cost of producing the next unit decreases. The percentage reduction in cost that occurs with each doubling of cumulative production is known as the learning rate (LR), given by:

$$LR = 1 - 2^{-b}$$

DOE's current price forecast methodology is a special case of the forecast equations specified above, but to date, DOE has assumed that the learning rate parameter is 0 in its energy conservation standards analysis. This notice describes an approach for improving this assumption and estimating non-zero learning rate parameters consistent with historical cost data.

*Data.* In typical learning curve formulations, the learning rate parameter is derived using two historical data series: Cumulative production and price (or cost). On the basis of previous rulemakings, DOE is aware of several relevant data sets. Annual shipments (for calculating cumulative production) of several appliances can be found in industry publications (*e.g.,* Appliance Magazine) and industry association (*e.g.,* the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), the Association of Home Appliance Manufacturers (AHAM) Fact Book, *etc.*) data sets. Historical shipment-weighted efficiency data could be gathered from these sources, as well as from the Energy Information Administration (EIA). Historical price or cost data for several products could be derived from the Bureau of Labor Statistics' (BLS) Producer Price Index (PPI) and/or Consumer Price Index (CPI).

Table 1 provides these data for refrigerators, refrigerator-freezers, and freezers (including compacts). The inflation-adjusted price index is derived from CPI data for 1947 to 1997 and PPI data from 1998 to 2009. The inflation-adjusted price is derived from a current price estimate for refrigerator-freezers that is then scaled over time by the inflation-adjusted price index. DOE estimates that cumulative refrigerator, refrigerator-freezer, and freezer shipments are 22.22 million in 1946 and then they increase each year with the current year shipments.

[1] *See,* for example, the review paper: Weiss, M., Junginger, H.M., Patel, M.K., Blok, K., (2010a). A Review of Experience Curve Analyses for Energy Demand Technologies. Technological Forecasting & Social Change. 77:411–428, which provides an extensive list of studies that have performed experience curve analyses.

TABLE 1—HISTORICAL DATA REGARDING REFRIGERATOR, REFRIGERATOR-FREEZER, AND FREEZER PRICES AND SHIPMENTS

| Year | Inflation-adjusted price index | Inflation-adjusted price (2009$) | Shipments (millions) | Cumulative Shipments (millions) |
|---|---|---|---|---|
| 1947 | 3.95 | $4,132 | 4.01 | 26.23 |
| 1948 | 4.03 | 4,218 | 5.46 | 31.68 |
| 1949 | 3.96 | 4,144 | 4.94 | 36.62 |
| 1950 | 3.83 | 4,001 | 7.09 | 43.71 |
| 1951 | 3.73 | 3,906 | 5.09 | 48.79 |
| 1952 | 3.52 | 3,686 | 4.60 | 53.39 |
| 1953 | 3.37 | 3,522 | 4.69 | 58.08 |
| 1954 | 3.12 | 3,258 | 4.65 | 62.73 |
| 1955 | 2.94 | 3,071 | 5.27 | 68.00 |
| 1956 | 2.50 | 2,611 | 4.78 | 72.78 |
| 1957 | 2.22 | 2,326 | 4.45 | 77.23 |
| 1958 | 2.09 | 2,186 | 4.23 | 81.45 |
| 1959 | 2.07 | 2,164 | 4.91 | 86.36 |
| 1960 | 1.99 | 2,081 | 4.61 | 90.98 |
| 1961 | 1.94 | 2,032 | 4.63 | 95.61 |
| 1962 | 1.88 | 1,967 | 4.94 | 100.56 |
| 1963 | 1.81 | 1,890 | 5.31 | 105.87 |
| 1964 | 1.75 | 1,829 | 5.75 | 111.61 |
| 1965 | 1.67 | 1,747 | 6.15 | 117.76 |
| 1966 | 1.56 | 1,633 | 6.21 | 123.97 |
| 1967 | 1.51 | 1,581 | 5.96 | 129.93 |
| 1968 | 1.47 | 1,536 | 6.42 | 136.35 |
| 1969 | 1.42 | 1,482 | 6.58 | 142.94 |
| 1970 | 1.38 | 1,439 | 6.59 | 149.53 |
| 1971 | 1.35 | 1,410 | 7.02 | 156.54 |
| 1972 | 1.31 | 1,366 | 7.66 | 164.21 |
| 1973 | 1.23 | 1,289 | 8.14 | 172.35 |
| 1974 | 1.17 | 1,226 | 7.38 | 179.73 |
| 1975 | 1.21 | 1,262 | 6.00 | 185.72 |
| 1976 | 1.20 | 1,250 | 6.27 | 192.00 |
| 1977 | 1.16 | 1,217 | 7.20 | 199.19 |
| 1978 | 1.15 | 1,200 | 7.43 | 206.62 |
| 1979 | 1.09 | 1,137 | 7.31 | 213.93 |
| 1980 | 1.02 | 1,062 | 6.80 | 220.73 |
| 1981 | 0.99 | 1,031 | 6.73 | 227.46 |
| 1982 | 1.01 | 1,055 | 6.29 | 233.75 |
| 1983 | 1.01 | 1,055 | 7.47 | 241.22 |
| 1984 | 0.98 | 1,028 | 7.99 | 249.20 |
| 1985 | 0.94 | 984 | 8.24 | 257.44 |
| 1986 | 0.92 | 957 | 8.68 | 266.12 |
| 1987 | 0.88 | 923 | 9.08 | 275.20 |
| 1988 | 0.86 | 895 | 9.34 | 284.53 |
| 1989 | 0.83 | 872 | 8.88 | 293.41 |
| 1990 | 0.79 | 823 | 8.97 | 302.37 |
| 1991 | 0.75 | 782 | 8.99 | 311.37 |
| 1992 | 0.72 | 758 | 9.52 | 320.88 |
| 1993 | 0.72 | 753 | 9.84 | 330.72 |
| 1994 | 0.73 | 766 | 10.39 | 341.11 |
| 1995 | 0.71 | 747 | 10.56 | 351.68 |
| 1996 | 0.70 | 736 | 10.93 | 362.60 |
| 1997 | 0.68 | 712 | 10.90 | 373.51 |
| 1998 | 0.63 | 659 | 11.98 | 385.49 |
| 1999 | 0.60 | 630 | 13.02 | 398.51 |
| 2000 | 0.57 | 596 | 13.18 | 411.69 |
| 2001 | 0.54 | 561 | 13.37 | 425.05 |
| 2002 | 0.52 | 539 | 14.84 | 439.89 |
| 2003 | 0.49 | 514 | 15.90 | 455.79 |
| 2004 | 0.48 | 499 | 16.69 | 472.48 |
| 2005 | 0.47 | 494 | 16.73 | 489.21 |
| 2006 | 0.46 | 482 | 15.39 | 504.60 |
| 2007 | 0.45 | 475 | 15.09 | 519.69 |
| 2008 | 0.45 | 475 | 14.37 | 534.06 |
| 2009 | 0.47 | 496 | 14.27 | 548.34 |

*Application to Standards.* Given the information currently available to DOE, DOE believes (and invites comments on the view that) the following methodology may provide the most accurate method for forecasting the incremental cost of efficiency given the potential impact of long-term product price trends or technological learning:

• When sufficiently long-term data are available on the cost trends for equipment or technologies for particular efficiency design options, an empirical experience curve fit to the available data may be used to forecast future costs of such design option technologies. If a statistical evaluation indicates a low level of confidence in estimates of the design option cost trend, this method should not be used to forecast costs.

• When sufficiently long term data are not available for forecasting the cost of products or equipment using specific efficiency-improving components, the experience curve cost trend for the product or equipment as a whole should be applied to both the product or equipment price and the incremental product or equipment price.

• When sufficiently long term data are not available for a specific product or equipment, it may be appropriate to apply the experience curve cost trend for a similar product or equipment, or a product or equipment grouping that includes the product or equipment at issue, to both the product or equipment price and the incremental product or equipment price. Alternatively, DOE may use experience curve parameters from review studies that may indicate that certain parameter ranges apply to certain classes or groups of products or equipment that include the product or equipment under analysis. If data are not available for estimating a price trend, DOE may use a constant real price trend as in past rulemakings.

In other words, when data are available to help guide DOE in projecting potential cost reductions over time for a particular appliance or equipment, DOE plans to use these data as part of its analyses. In those instances where such data are unavailable, DOE will continue to employ the methods it currently uses, which is to hold costs at a fixed level for purposes of long-term impact projections.

For the energy conservation standards analysis for refrigerators, refrigerator-freezers and freezers, long-term data are available on overall product costs. DOE is therefore considering use of the long term trend in product price to forecast the long term trend in the incremental cost of efficiency. DOE posts updated national impact analysis spreadsheets that incorporate price trend forecasting at *http://www.eere.energy.gov/buildings/appliance_standards* for public review.

To improve the accuracy and reliability of price forecasts, DOE may periodically review the performance of equipment and incremental efficiency cost forecasts and may make further methodological improvements that improve forecast accuracy and reliability.

In the next section, DOE seeks information on all of the issues covered in this section, as well as additional topics.

**General Discussion of Potential Consumer Welfare Impacts**

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade-off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information, (2) a lack of sufficient savings to warrant delaying or altering purchases (*e.g.* an inefficient ventilation fan in a new building or the delayed replacement of a water pump), (3) inconsistent (*e.g.* excessive short-term) weighting of future energy cost savings relative to available returns on other investments, (4) computational or other difficulties associated with the evaluation of relevant tradeoffs, and (5) a divergence in incentives (*e.g.* renter versus owner; builder v. purchaser). In the abstract, it may be difficult to say how a welfare gain from correcting under-investment compares in magnitude to the potential welfare losses associated with no longer purchasing a machine or switching to an imperfect substitute, both of which still exist in this framework.

Other literature indicates that with less than perfect foresight and uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings. Some studies suggest that this seeming undervaluation may be explained in certain circumstances by differences between tested and actual energy savings, or by uncertainty and irreversibility of energy investments.

The mix of evidence in the empirical literature suggests that if feasible, analysis of regulations mandating energy efficiency improvements should explore the potential for both welfare gains and losses and move toward fuller economic framework where all relevant changes can be quantified.[2] While DOE is not prepared at present to provide a fuller quantifiable framework for this discussion, DOE seeks comments on how to assess these issues.[3]

**Issues on Which DOE Seeks Comment and Information**

*Data Sources*

1. DOE seeks data related to observed trends in historical costs, retail prices, and shipment efficiencies of products and equipment covered by the Energy Conservation Standards program.

2. DOE seeks data related to observed trends in historical costs, retail prices, and shipment efficiencies of products and equipment that, while not covered by the Energy Conservation Standards program, may be of use to DOE with respect to its treatment of technology learning curves and consumer welfare impacts.

3. DOE seeks data related to historical costs and prices of covered products and equipment delineated by efficiency level.

4. DOE seeks information on the appropriate range of values for learning parameters found in the relevant literature, either in the aggregate or associated with specific appliances, equipment, technologies, or production processes.

*Potential Methodologies*

1. DOE specifically seeks comment on the methodology described in the "Background" section above.

2. DOE seeks information on alternative methodologies for forecasting equipment price trends in its analyses.

3. DOE seeks comment on how changes in other product attributes, including efficiency, could be "normalized" or "corrected" based on historical data.

4. DOE seeks comment on methods for calculating changes in historical costs or prices, including the use of the PPI and CPI.

5. DOE seeks comment on methods of deriving historical production volumes.

6. DOE seeks comment on the details of the method, data and references

[2] A good review of the literature related to this issue can be found in Gillingham, K., R. Newell, K. Palmer. (2009). "Energy Efficiency Economics and Policy," *Annual Review of Resource Economics*, 1: 597–619; and Tietenberg, T. (2009). "Energy Efficiency Policy: Pipe Dream or Pipeline to the Future?" *Review of Environmental Economics and Policy*. Vol. 3, No. 2: 304–320.

[3] A draft paper, "Notes on the Economics of Household Energy Consumption and Technology Choice," proposes a broad theoretical framework on which an empirical model might be based and is posted on the DOE Web site along with this notice at *http://www.eere.energy.gov/buildings/appliance_standards.*

described in the draft paper "Using the Experience Curve Approach for Appliance Price Forecasting" posted on the DOE Web site at *http://www.eere.energy.gov/buildings/appliance_standards.*

7. DOE seeks comment on data sources and analytical methods for estimating potential consumer welfare impacts from energy conservation standards, including information on specific consumer subgroups of products regulated under the energy conservation program.

*Procedural Issues*

1. DOE seeks comment on the details of how equipment price forecasts and consumer welfare impacts may be incorporated into specific downstream analyses that rely on the engineering analysis outputs and what other methodological changes to those analyses might be merited.

2. DOE seeks comment on products or equipment, or groups of products or equipment, that are likely to have the greatest and least improvement in price forecast accuracy from the application of experience curve methodology.

3. DOE seeks information on alternative methods for modeling persistent price trends for regulated products or equipment.

*General Analysis Methodology*

1. DOE seeks comments and information regarding additional ways of improving the accounting of costs and benefits in its energy conservation standards analysis, including comment on benefits and costs that may not have been included in energy conservation standards analyses to date.

2. DOE seeks information on how standards can affect the dynamics of innovation and investment in U.S. appliance and equipment industries.

3. DOE seeks comment on ways in which standards-induced innovation and investment might impact the competitiveness of U.S. products and companies in the global marketplace.

4. DOE seeks comment on the additional global benefits that may arise from standards that may encourage U.S. appliances and equipment to have efficiency performance levels exceeding the efficiency performance levels of appliances and equipment in other countries.

The purpose of this NODA is to solicit feedback from industry, manufacturers, academia, consumer groups, efficiency advocates, government agencies, and other stakeholders on issues related price forecasts in DOE's engineering analyses for Energy Conservation Standards rulemakings. DOE is specifically interested in information and sources of data related to covered products and equipment that could be used in formulating a methodology regarding long term equipment price forecasts, and a methodology regarding consumer welfare impacts. Respondents are advised that DOE is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this NODA. Responses to this NODA do not bind DOE to any further actions related to this topic.

Issued in Washington, DC, on February 15, 2011.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011–3873 Filed 2–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 901

**[SATS No. AL–076–FOR; Docket ID: OSM–2010–0020]**

### Alabama Regulatory Program

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

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

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposes revisions to its Program regarding their license fees, annual license updates, and blaster certification fees. Alabama intends to revise its program to improve operational efficiency. The fees will be used to recover Alabama's anticipated costs of reviewing, administering, and enforcing Alabama's licensing and blaster certification requirements.

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

**DATES:** We will accept written comments on this amendment until 4 p.m., c.s.t., March 24, 2011. If requested, we will hold a public hearing on the amendment on March 21, 2011. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on March 9, 2011.

**ADDRESSES:** You may submit comments, identified by SATS No. AL–076–FOR by any of the following methods:

- *E-mail: swilson@osmre.gov.* Include "SATS No. AL–076–FOR" in the subject line of the message.
- *Mail/Hand Delivery:* Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209.
- *Fax:* (205) 290–7280.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

*Docket:* For access to the docket to review copies of the Alabama program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office or going to *http://www.regulations.gov.*

Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, *Telephone:* (205) 290–7282, *E-mail: swilson@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Alabama Surface Mining Commission, 1811 Second Ave., P.O. Box 2390, Jasper, Alabama 35502–2390, *Telephone:* (205) 221–4130.

**FOR FURTHER INFORMATION CONTACT:** Sherry Wilson, Director, Birmingham Field Office. *Telephone:* (205) 290–7282. *E-mail: swilson@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

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

## I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the

regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

## II. Description of the Proposed Amendment

By letter dated October 28, 2010 (Administrative Record No. AL–662), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

### *A. Alabama Rule 880–X–6A–.07 License Fees*

Alabama's regulations require any person who intends to conduct surface coal mining operations to obtain a license prior to applying for a permit to mine coal. Their proposed change increases the license fee from $1,000.00 to $2,500.00 and deletes language for pre-existing license fees.

### *B. Alabama Rule 880–X–6A–.08 Annual License Updates*

Alabama's regulations require mining licenses to be updated annually. Their proposed change alters the date of annual license updates, replaces the word "renewal" with "update" or "license update," adds the use of listing an internet site for form downloads, increases the fee from $100.00 to $500.00, deletes the $100.00 penalty payment for delinquency, deletes the language where a license becomes null and void and replaces it with the issuance of a Cessation Order, and explains the license reinstatement process.

### *C. Alabama Rule 880–X–12A–.09 Fees*

This change adds a new section that establishes a $100.00 blaster certification fee, a $50.00 blaster certification renewal fee, and a $50.00 blaster certification reciprocity fee.

## III. Public Comment Procedures

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

### *Electronic or Written Comments*

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

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

### *Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available 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.

### *Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on March 9, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

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

### *Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

### *Executive Order 12866—Regulatory Planning and Review*

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

### *Other Laws and Executive Orders Affecting Rulemaking*

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

## List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 2010.

**Ervin J. Barchenger,**

*Regional Director, Mid-Continent Region.*

[FR Doc. 2011–3910 Filed 2–18–11; 8:45 am]

**BILLING CODE 4310–05–P**

## POSTAL SERVICE

## 39 CFR Part 111

## Shortpaid and Unpaid Information-Based Indicia (IBI) Postage and Shortpaid Express Mail Postage, Revised Proposal

**AGENCY:** Postal Service™.

**ACTION:** Proposed rule, revised.

**SUMMARY:** On November 19, 2009, the Postal Service published a proposed rule to revise *Mailing Standards of the United States Postal Service*, Domestic Mail Manual to implement revenue protection procedures for shortpaid and unpaid Information Based Indicia (IBI) postage. Comments on that proposed rule requested more detailed information on the automated procedures the Postal Service will use to identify and verify shortpaid and unpaid IBI postage payment and the resolution process that will be used to remedy deficiencies. This revised proposal provides the more detailed information to DMM sections 604.4, 604.8, and 604.10. In addition, this revised proposal includes proposed mailing standards to implement revenue protection procedures for shortpaid Express Mail® postage.

**DATES:** We must receive your comments on or before March 24, 2011.

**ADDRESSES:** Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments concerning the proposed rule, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov*, with a subject line of "Shortpaid and Unpaid Information-Based Indicia Postage and Shortpaid Express Mail® Postage." Faxed comments are not accepted.

**FOR FURTHER INFORMATION CONTACT:** Carla Sherry 703–280–7068 or Carol A. Lunkins 202–268–7262.

**SUPPLEMENTARY INFORMATION:** In this revised proposed rule, the Postal Service is proposing new procedures to manage shortpaid Express Mail postage and a new process to detect mailpieces with shortpaid and unpaid IBI postage generated from the following postage evidencing systems: Click-N-Ship®, IBI postage meters, and PC Postage® products.

In addition, the Postal Service is proposing to implement a new Web-based resolution process to remedy shortpaid and unpaid IBI postage payment deficiencies, to dispute shortpaid and unpaid IBI postage deficiency assessments, and to appeal USPS decisions relative to shortpaid and unpaid IBI postage.

The Postal Service published a proposed rule in the **Federal Register** on November 18, 2009 (74 FR 59494–59496), inviting comments on the implementation of revenue protection procedures for IBI postage generated by postage evidencing systems.

Comments were received from the mailing industry requesting more detailed information on the automated procedures that the Postal Service will implement to identify and verify shortpaid and unpaid IBI postage and the resolution process to remedy deficiencies.

In response to those comments, this revised proposed rule provides detailed information on the revenue protection process for shortpaid and unpaid IBI postage generated from postage evidencing systems, the process to identify and verify shortpaid and unpaid IBI postage, and the resolution process to remedy, dispute, or appeal matters relative to shortpaid and unpaid IBI postage.

### Express Mail Shortpaid Procedure

To ensure revenue protection for Express Mail paid by any authorized postage payment method, the Postal Service is proposing to implement new shortpaid Express Mail postage procedures.

For an Express Mail Next Day, Second Day, Military, or Custom Designed Service item received at the origin office of mailing with insufficient postage, the mailer is contacted to correct the postage deficiency prior to dispatch of the Express Mail item. If the mailer cannot be contacted before dispatch from the origin office, the Express Mail item is endorsed 'Postage Due', marked to show the total deficiency of postage and fees, and then dispatched to the destination Post Office for delivery to the addressee upon payment of the postage due.

For an Express Mail item with insufficient postage that is identified in processing operations or at the destination Post Office, the Express Mail item will be endorsed 'Postage Due', marked to show the total deficiency of postage and fees, and then delivered to the addressee upon payment of the postage due. If the payment of postage due is refused by the addressee, the Express Mail item is endorsed "Return to Sender—Refused." The postage deficiency is collected when the Express Mail item is returned to the original sender. If the original sender chooses to remail the item, a new Express Mail label and new postage and fees must be affixed.

For an Express Mail item with insufficient IBI postage that is generated from postage evidencing systems, USPS may follow the process identified in DMM 604.4.4.4 through 604.4.4.9 to resolve such revenue deficiencies.

### Postage Evidencing Systems

Postage meters, PC Postage products, and Click-N-Ship are collectively identified as "postage evidencing systems." A postage evidencing system is a device or system of components a customer uses to print evidence that postage required for mailing has been paid.

The Postal Service implemented postage evidencing systems to meet the needs of the mailing industry by providing convenient, user-friendly methods for mailers to print and pay postage. To protect the viability of postage evidencing systems, the Postal Service continually implements measures to ensure revenue protection.

### Postage

Postage refers to postage and fees due for the applicable price category and associated criteria such as class, weight, shape, zone, and extra services.

### Information-Based Indicia

Information-Based Indicia (IBI) are digitally generated indicia that include a two-dimensional barcode.

### Revenue Deficiency

In this proposed rule, a revenue deficiency includes both shortpaid and unpaid postage and occurs when any mailpiece has less postage than required for the applicable price category and associated criteria such as class, weight, shape, zone, and extra services.

### Shortpaid Postage

Shortpaid postage is a revenue deficiency for which the valid postage on a mailpiece is less than the amount due.

### Unpaid Postage

Unpaid postage is a revenue deficiency for which postage is deficient due to the use of counterfeited,

replicated, duplicated, falsified, or otherwise modified postage.

**Detection Process for Revenue Deficiency**

As part of the Postal Service's ongoing efforts to increase effectiveness, enhance financial controls, and reduce costs, the Postal Service is proposing to add a new process using mail processing equipment and ancillary information systems to detect and capture shortpaid and unpaid IBI postage on mailpieces.

When the Postal Service detects potential shortpaid or unpaid IBI postage on a mailpiece, the Postal Service will subsequently verify the postage on the mailpiece to ensure its validity and confirm the amount is sufficient. When the Postal Service confirms that the IBI postage on a mailpiece is shortpaid or unpaid, corrective measures will be taken to recover the applicable revenue deficiency.

**Electronic Notification of Revenue Deficiencies**

When the Postal Service identifies shortpaid or unpaid IBI postage generated from postage evidencing systems on mailpieces, in most cases, the Postal Service will use an electronic process to recover the revenue deficiency.

In such cases, the Postal Service will electronically notify both the mailer and the postage evidencing system service provider of the revenue deficiency and deliver the mailpiece to the addressee.

The electronic notification will provide a link to a USPS Web-based customer payment portal that will enable the mailer to pay or dispute the revenue deficiency.

Additionally, other non-electronic processes may be used to recover a revenue deficiency as required.

**Resolution Process**

Where applicable, the Postal Service will provide a resolution process that will be accessible through a USPS Web-based customer payment portal to enable mailers to pay, dispute or appeal revenue deficiencies for IBI postage generated from postage evidencing systems.

**Payment Process**

The mailer will have 14 days from the date that the Postal Service sends the revenue deficiency electronic notification to pay the deficiency. The payment process is as follows:

- During the 14-day resolution period, the mailer must remit the payment for the revenue deficiency by accessing a USPS Web-based customer payment portal or through an otherwise authorized Postal Service payment method as indicated in the electronic notification.
- After 14 days, if a mailer has not paid or taken action to dispute a revenue deficiency, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account.
- When an electronic notification sent to a mailer is undeliverable, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 14-day period.
- When a mailer's cumulative revenue deficiency continues to increase during the 14-day period, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 14-day period.
- If the mailer feels the revenue deficiency is in error, the mailer may dispute the revenue deficiency during this 14-day period.

**Dispute Process**

The mailer will have 14 days from the date that the Postal Service sends the revenue deficiency electronic notification to dispute the deficiency. The dispute process is as follows:

- During this 14-day period, the mailer must take action to dispute the revenue deficiency by accessing a USPS Web-based customer payment portal or through an otherwise authorized Postal Service dispute method as indicated in the electronic notification.
- The mailer must provide information to substantiate that the postage affixed was valid and sufficient for the postage and service fees associated with the mailpiece.
- After 14 days, if a mailer has not taken action to pay or dispute a revenue deficiency, the Postal Service will notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account.
- When an electronic notification that is sent to a mailer is undeliverable, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 14-day period.
- When a mailer's cumulative revenue deficiency continues to increase during this 14-day period, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 14-day period.

The Postal Service will send electronic notification of the approved (upheld) or denied dispute to the mailer. If the Postal Service upholds the mailer's dispute, then the mailer is required to take no further action.

**Denied Disputes and the Appeal Process**

When the Postal Service denies a dispute, the mailer will have 7 days from the date that the Postal Service sends the electronic notification of the denied dispute to pay the revenue deficiency or file an appeal. The mailer may pay the deficiency or appeal the decision by accessing a USPS Web-based customer payment portal or through an otherwise authorized Postal Service payment or appeal method as indicated in the electronic notification. The appeal process is as follows:

- The appeal process requires that the mailer provide additional information to substantiate that the postage affixed was valid and sufficient for the postage and service fees associated with the mailpiece.
- After 7 days, if a mailer has not taken action to pay or appeal the revenue deficiency denied in the dispute request, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account.
- When an electronic notification that is sent to a mailer is undeliverable, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 7-day period.
- When a mailer's cumulative revenue deficiency continues to increase during this 7-day period, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 7-day period.

The Postal Service will make a final decision regarding the appeal request. If the Postal Service upholds the mailer's appeal, the Postal Service will notify the mailer of the decision, and the mailer is required to take no further action.

**Denied Appeals**

When the Postal Service denies the appeal request, the Postal Service will notify the mailer of the denial decision. The mailer must pay the revenue deficiency, within 7 days from the date that the Postal Service sends the electronic notification of appeal denial, by accessing a USPS Web-based customer payment portal or through an

otherwise authorized Postal Service payment method as indicated in the electronic notification. The process for denied appeals is as follows:

- After 7 days of the denied appeal electronic notification, if a mailer has not taken action to pay the revenue deficiency, the Postal Service will notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account.
- When an electronic notification to a mailer is undeliverable, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 7-day period.
- When a mailer's cumulative revenue deficiency continues to increase during this 7-day period, the Postal Service may notify the mailer's postage evidencing system service provider to temporarily suspend the mailer's account prior to the end of the 7-day period.

**Denial of Use of Postage Evidencing Systems**

When a mailer fails to meet the standards in the DMM, submits false or incomplete information, or deposits shortpaid and unpaid mailpieces in the mailstream, the Postal Service may deny a mailer use of a postage evidencing system.

Any mailer who deposits mailpieces with shortpaid or unpaid IBI postage or fees may be subject to some or all of the following proposed actions:

- Collection of the shortpaid or unpaid postage.
- Revocation of the mailer's account privileges.
- Civil and criminal fines and penalties pursuant to existing Federal law.

Although the USPS is exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR part 111.1.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

## PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

**600 Basic Standards for All Mailing Services**

* * * * *

**604 Postage Payment Methods**

* * * * *

*4.0 Postage Meters and PC Postage Products ("Postage Evidencing Systems")*

4.1 Basic Information

* * * * *

4.1.2 Product Categories

* * * The primary characteristics of postage meters and PC Postage products are described below.

* * * * *

*[Revise items b and c of 4.1.2 as follows:]*

b. PC Postage products allow mailers to purchase and print postage with Information-Based Indicia (IBI) directly onto mailpieces, shipping labels, and USPS-approved customized labels.

c. USPS (Click-N-Ship) and USPS-approved commercial providers offer PC Postage products for mailers through subscription service agreements.

* * * * *

4.2 Authorization To Use Postage Evidencing Systems

* * * * *

4.2.4 Denial of Use

*[Revise paragraph of 4.2.4 as follows:]*

The Postal Service may deny a mailer authorization to use a postage evidencing system when a mailer:

a. Fails to comply with mailing standards.

b. Submits false or incomplete information.

c. Enters shortpaid or unpaid mailpieces in the mailstream.

*[Renumber current item 4.2.5 as 4.2.6 and add new item 4.2.5 as follows:]*

4.2.5 Surrender of Postage Evidence System

If authorization to use a Postage Evidencing System is denied, the mailer must surrender the systems, upon request, to the postage evidencing system service provider, USPS, or USPS agent.

4.2.6 Appeal Process

*[Revise text of renumbered 4.2.6 as follows:]*

Appeals regarding standards in 4.0 or on the basis of noncompliance may be filed as follows:

a. For appeals regarding IBI postage, mailers must appeal under 4.4.8.

b. All other appeals must be in writing to the manager, Postage Technology Management (*see* 608.8.1 for address).

4.3 Postage Payment

4.3.1 Paying for Postage

*[Revise the first sentence of 4.3.1 as follows:]*

The value of the postage on each mailpiece must be equal to or greater than the amount due for the applicable price and extra service fees, or another amount permitted by mailing standards. * * *

* * * * *

*[Renumber current items 4.4 through 4.6 as new 4.5 through 4.7, and add new item 4.4 as follows:]*

4.4 Shortpaid and Unpaid Information-Based Indicia

4.4.1 Definitions

Mailpieces bearing shortpaid postage are those for which the total postage and fees affixed are less than the postage required for the applicable price and extra services fees. Mailpieces bearing unpaid Information-Based Indicia (IBI) are those for which the mailer has not paid the postage or service fees due to the use of counterfeited, replicated, duplicated, falsified, otherwise modified IBI, or IBI with zero value.

4.4.2 Detection Process for Revenue Deficiency

When mailpieces with shortpaid or unpaid postage are found in the mailstream, USPS will use manual and automated processes to detect and verify the revenue deficiencies.

4.4.3 Handling of Mailpieces With IBI Postage Revenue Deficiencies

When the Postal Service confirms shortpaid or unpaid IBI postage, the Postal Service will take corrective measures that may include:

a. Delivering the mailpiece to the addressee and collecting the revenue deficiency from the addressee as postage due.

b. Collecting the revenue deficiency from the sender as described in 4.4.4 through 4.4.9.

c. Returning the mailpiece to the sender.

4.4.4 Electronic Notification of Revenue Deficiencies

When the Postal Service confirms a revenue deficiency for a mailpiece with IBI postage, the Postal Service may use an electronic process to recover the deficiency from the mailer. In these cases, the Postal Service will electronically notify both the mailer and the postage evidencing system service provider of the revenue deficiency and will deliver the mailpiece to the addressee. The notification will provide a link to a USPS Web-based customer payment portal that will enable the mailer to pay or dispute the revenue deficiency.

4.4.5 Resolution Process

The Postal Service will provide a resolution process through a USPS Web-based customer payment portal.

4.4.6 Payment Process

The mailer will have 14 days from the date that the Postal Service sends the electronic notification to pay the revenue deficiency. The mailer must submit payment for the revenue deficiency during this 14-day period by accessing a Postal Service Web-based

customer payment portal or choose another method identified in the notification. The mailer may choose to dispute (*see* 4.4.7) the revenue deficiency during this 14-day period. The Postal Service may notify the postage evidencing system service provider to temporarily suspend the mailer's account under the following conditions:

a. After 14 days, if a mailer has not paid or disputed a revenue deficiency.

b. When an electronic notification to a mailer is undeliverable.

c. When a mailer's cumulative revenue deficiency increases during the 14-day period due to additional mailpieces being identified as shortpaid or unpaid.

4.4.7 Dispute Process

To begin the dispute process, the mailer must access a Postal Service Web-based customer payment portal or choose another method identified in the electronic notification to substantiate that the postage affixed was valid and sufficient for the postage and fees. The process is as follows:

a. The mailer will have 14 days from the date that the Postal Service sends the notification to dispute the revenue deficiency.

b. The Postal Service will send electronic notification to the mailer of its decision to uphold or deny the dispute. If the Postal Service upholds the dispute, the mailer is not required to take further action.

4.4.8 Denied Disputes and the Appeal Process

When the Postal Service denies a mailer's dispute of a revenue deficiency, the mailer will have 7 days from the date the Postal Service sends the notification of the denial to pay the revenue deficiency or file an appeal. To pay the dispute or file an appeal, the mailer must access a Postal Service Web-based customer payment portal or choose another method identified in the notification. To appeal, the mailer must provide additional information to substantiate that the postage affixed was valid and sufficient for the postage and fees. The Postal Service will send electronic notification to the mailer of its decision to uphold or deny the appeal. If the Postal Service upholds the appeal, the mailer is not required to take further action. The Postal Service may notify the postage evidencing system service provider to temporarily suspend the mailer's account under the following conditions:

a. After 7 days, if a mailer has not paid or appealed a revenue deficiency.

b. When an electronic notification to a mailer is undeliverable.

c. When a mailer's cumulative revenue deficiency increases during the 7-day period due to additional mailpieces being identified as shortpaid or unpaid.

4.4.9 Denied Appeals

When the Postal Service denies the appeal, the mailer must pay the revenue deficiency within 7 days from the date that the Postal Service sends the electronic notification of denial by accessing a Postal Service Web-based customer payment portal or choosing another USPS-authorized method identified in the notification. The Postal Service may notify the postage evidencing system service provider to temporarily suspend the mailer's account under the following conditions:

a. After 7 days, if a mailer has not paid the revenue deficiency.

b. When an electronic notification to a mailer is undeliverable.

c. When a mailer's cumulative revenue deficiency increases during the 7-day period due to additional mailpieces being identified as shortpaid or unpaid.

* * * * *

8.1 Insufficient Postage

8.1.1 Definition

*[Revise the second and third sentences of 8.1.1 as follows:]*

* * * Such individual pieces (or quantities fewer than 10) are delivered to the addressee on payment of the charges marked on the mail. For mailings of 10 or more pieces, the mailer is notified so that the postage charges may be paid before dispatch. For any mailpiece with insufficient postage generated by postage evidencing systems, the USPS may follow the process in 4.4.4 through 4.4.9.

* * * * *

*[Renumber current item 8.1.7 as 8.1.8 and add new 8.1.7 as follows:]*

8.1.7 Express Mail Corporate Accounts and Federal Agency Accounts

Express Mail Corporate accounts and Federal government accounts that use a "Postage and Fees Paid" indicia are debited for the correct amount of postage and fees at the time of mailing.

*[Revise the heading and text of renumbered 8.1.8 as follows:]*

8.1.8 Express Mail With Insufficient Postage—Acceptance

When any Express Mail item is received at the office of mailing with insufficient postage, the Postal Service will contact the mailer to correct the postage deficiency prior to dispatch of the item. If the mailer cannot be contacted prior to dispatch, the Postal Service will:

a. Endorse the item "Postage Due."

b. Mark the item to show the total deficiency of postage and fees.

c. Dispatch the item to the destination Post Office for delivery to the addressee upon payment of the postage due.

d. If payment is refused by addressee, endorse the item "Return to Sender—Refused" and return the item to the sender upon collection of the postage deficiency.

*[Add new items 8.1.9 through 8.1.11 as follows:]*

8.1.9 Express Mail With Insufficient Postage—Processing Operations

For an Express Mail item with insufficient postage identified in processing operations or at the destination Post Office, the Postal Service will:

a. Endorse the item "Postage Due."

b. Mark the item to show the total deficiency of postage and fees.

c. Deliver the item to the addressee upon payment of the postage due.

d. If payment is refused by addressee, endorse the item "Return to Sender—Refused" and return the item to the sender, upon collection of the postage deficiency.

8.1.10 Express Mail With Insufficient IBI Postage—Postage Evidencing Systems

For an Express Mail item with insufficient IBI postage generated by postage evidencing systems, USPS may follow the process in 4.4.4 through 4.4.9.

8.1.11 Remailing Express Mail With Insufficient Postage

The Postal Service returns an Express Mail item with insufficient postage to the sender upon collection of the postage deficiency when an effort to contact the sender before dispatch fails and when the addressee refuses to pay the postage due. Under these circumstances, if the sender remails the item, the sender must affix a new Express Mail label with new postage and fees to the item.

* * * * *

*10.0 Revenue Deficiency*

10.1 General

* * * * *

10.1.2 Appeal of Ruling

*[Revise the first sentence of 10.1.2 as follows:]*

Except as provided in 4.4.4 through 4.4.9, 10.2, and 703.1.0, a mailer may appeal a revenue deficiency assessment by sending a written appeal to the postmaster or manager in 10.1.2a through 10.1.2c within 30 days of receipt of the notification. * * *

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

**Neva R. Watson,**

*General Counsel, Legislative.*

[FR Doc. 2011–3798 Filed 2–18–11; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2011–0011; FRL–9268–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendment to the Definition of Fuel-Burning Equipment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland amending the definition of "fuel-burning equipment." The revision removes the word "furnace" from the definition of "fuel-burning equipment" in one of Maryland's regulations and also removes the redundant definition of "fuel-burning equipment" from

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

**DATES:** Comments must be received in writing by March 24, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0011 by one of the following methods:

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

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

C. *Mail:* EPA–R03–OAR–2011–0011, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2011–0011. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

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

Dated: February 1, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011–3723 Filed 2–18–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2010–1083; FRL–9268–4]**

## Finding of Substantial Inadequacy of Implementation Plan; Call for Iowa State Implementation Plan Revision

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Environmental Protection Agency's (EPA) authority in the Clean Air Act (CAA), section 110 (k)(5), to call for plan revisions, EPA is proposing to find that the Iowa State Implementation Plan (SIP) is substantially inadequate to maintain the 2006 24-hour National Ambient Air Quality Standard (NAAQS) for $PM_{2.5}$ in Muscatine County, Iowa. The specific SIP deficiencies needing revision are described below. EPA is also proposing to finalize a timeline for Iowa to revise its SIP to correct these deficiencies by a date which is no later than 18 months after the effective date of the final rule.

**DATES:** Comments must be received on or before March 24, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2010–1083, by one of the following methods:

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

2. *E-mail: casburn.tracey@epa.gov.*

3. *Mail*: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to: Tracey Casburn, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2010–1083. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The

*http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *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, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Tracey Casburn at (913) 551–7016 or by e-mail at *casburn.tracey@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What is the basis for the proposed finding?
II. How can Iowa correct the inadequacy and when must the correction be submitted?
III. What action is EPA proposing?
IV. Statutory and Executive Order Reviews
V. Statutory Authority

## I. What is the basis for the proposed finding?

EPA promulgated the 2006 24-hour NAAQS for $PM_{2.5}$ on October 17, 2006 (71 FR 61144) based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to fine particulate matter. The 2006 standard for 24-hour $PM_{2.5}$ was set at a level of 35 micrograms (μg) of particulate matter less than 2.5 micrometers (μm) in diameter, per cubic meter of air. The standard is met when the 3-year average of the 98th percentile of 24-hour concentrations is equal to or less than 35μg/m³. The computation of this 3-year average of the 98th percentiles of 24-hour concentrations is commonly referred to as the design value (dv)and is based on the most recent 3 years of quality assured data.

Section 110 (a) (2) (B) requires each state to establish and operate appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality. Pursuant to this authority, the state maintains a network of air quality monitors for $PM_{2.5}$ in accordance with 40 CFR Part 58 which meets applicable requirements. Monitors called State or Local Air Monitoring Stations (SLAMS) make up the ambient air quality monitoring sites whose data are primarily used for determining compliance with the NAAQS.

In accordance with section 107(d)(1)(B) of the CAA, no later than 2 years after promulgation of a new or revised NAAQS, the Administrator must designate all areas, or portions thereof, within each state as nonattainment, attainment or unclassifiable. This process is commonly referred to as the "designations process".

With respect to all pollutants, including $PM_{2.5}$, if monitoring data demonstrates that an area does not comply with the NAAQS, or contributes to a violation in a nearby area, that area is designated as nonattainment. If monitoring data demonstrates that an area complies with the NAAQS, and the area does not contribute to air quality problems in nearby areas that do not comply with the NAAQS, the area is designated attainment. If there is not enough information to determine if an area is compliant with the NAAQS it is designated as unclassifiable. On November 13, 2009, EPA promulgated its final designations for the 2006 24-hour $PM_{2.5}$ standards (74 FR 58688). These designations were determined based upon air quality monitoring data for calendar years 2006–2008 (which were the most recent three years of data prior to the initial designations). The entire State of Iowa was designated as unclassifiable/attainment (74 FR 58729) at that time based on that set of data.

On May 20, 2010, the state submitted certified SLAMS monitoring data, for calendar year 2009, in accordance with 40 CFR Part 58. When determining the design value (dv) for the current 24-hour $PM_{2.5}$ standard based upon air quality monitoring data for calendar years 2007–2009, EPA concluded that a monitor in the Muscatine area recorded data violating the standard. The monitor (site ID# 191390015) is located in the City of Muscatine, Muscatine County, IA, and is the only $PM_{2.5}$ State or Local Air Monitoring (SLAM) station in the county. The SLAM stations make up the ambient air quality monitoring sites that are primarily needed for NAAQS comparisons. Site ID# 191390015 is often referred to as the "Garfield School" monitor and will be referred to as such in this proposed rulemaking. The 2007–2009 dv for the Garfield School monitor is 38 μg/m³. Historically, the Garfield School monitoring location has recorded fluctuating $PM_{2.5}$ values very near or above the NAAQs. Historical values are shown in Table 1. Preliminary data for 2010 indicate that the Muscatine area continues to violate the 2006 24-hour standard based on 2008–2010 monitoring data.

The area was not designated nonattainment at the time of EPA's initial designations rulemaking for the 2006 24-hour $PM_{2.5}$ standard in 2009, because, at that time, available certified monitoring data demonstrated that the dv was compliant with the standard.

TABLE 1—HISTORICAL DESIGN VALUES AT THE GARFIELD SCHOOL MONITOR

| Monitoring years | Design value |
|---|---|
| 2001–2003 | 35 |
| 2002–2004 | 35 |
| 2003–2005 | 38 |
| 2004–2006 | 34 |
| 2005–2007 | 36 |
| 2006–2008 | 35 |
| 2007–2009 | 38 |

Section 110(k)(5) of the CAA provides, in relevant part, that "[w]henever the Administrator finds that the applicable implementation plan for an area is substantially inadequate to attain or maintain the relevant national ambient air quality standard,* * *the Administrator shall require that state to revise the plan as necessary to correct such inadequacies."

Because monitor data in the Muscatine area show violations of the 2006 24-hour $PM_{2.5}$ standards, based upon 2007–2009 data, and have shown violations of the standard in the past (based upon 2005–2007 data), EPA

believes the SIP is substantially inadequate to maintain the 2006 24-hour NAAQS for $PM_{2.5}$ in this area. Therefore, EPA proposes to require revisions to the SIP as described further below.

**II. How can Iowa correct the inadequacy and when must the correction be submitted?**

EPA believes that the state must submit several specific plan elements to EPA in order to correct the inadequacy of the SIP indentified above. These specific elements are: (1) A revised emissions inventory for all sources (including area sources, mobile sources and other significant sources) that could be expected to contribute to the violating monitor because of their size, proximity, or other relevant factors consistent with 40 CFR 51.114(a); (2) a modeling demonstration consistent with Appendix W to 40 CFR Part 51 showing what reductions will be needed to attain and maintain the $PM_{2.5}$ NAAQS in the area; (3) adopted measures to achieve reductions determined necessary to attain and maintain the NAAQS, with enforceable schedules for implementing the measures as expeditiously as practicable; and (4) contingency measures as described below.

The Muscatine area is currently designated as attainment of the 2006 24-hour $PM_{2.5}$ standards, however, EPA is proposing to find the SIP substantially inadequate to maintain the 2006 24-hour NAAQS for $PM_{2.5,}$ due to the monitor in the Muscatine area (Garfield School) recording data violating the standard (considering 2007–2009 monitoring data). In this instance, the CAA requirements relating to nonattainment areas are not expressly applicable. Therefore, consistent with the general SIP requirements in section 110 of the CAA, EPA is proposing to require a SIP revision which includes adopted measures to achieve reductions determined necessary to attain and maintain the NAAQS, as well as contingency measures, as described below.

EPA is proposing that all adopted measures to achieve reductions, determined through the modeling demonstration to be necessary to attain and maintain the 2006 24-hour $PM_{2.5}$ standard, should be implemented no later than two years after the issuance of the final SIP Call. EPA believes that this schedule is reasonable, because the Iowa Department of Natural Resources has already performed a substantial portion of its analysis of the nature of the $PM_{2.5}$ problem in the area and the types of controls which might be necessary to address the problem.

EPA believes that it is reasonable to expect that the design value during the calendar year after the necessary controls are implemented should be at or below the 24-hour $PM_{2.5}$ standard. EPA proposes that the contingency measures would be triggered if the design value is above the standard in the calendar year after the implementation of controls necessary for attainment, or in any subsequent year. EPA is proposing that the SIP revision contain an enforceable commitment to adopt and implement sufficient contingency measures, once triggered, in an expeditious and timely fashion that is comparable and analogous to requirements for contingency measures in CAA Section 175A(d). To do so, the SIP revision should clearly identify measures which could be timely adopted and implemented, a schedule and procedure for adoption and implementation, and a specific time limit for action by the state. The schedule for adoption and implementation should be as expeditious as practicable, but no longer than 24 months after being triggered. EPA also seeks comments on whether any additional contingency measure triggers would be appropriate, or whether contingency measures should be adopted in advance and available for prompt implementation once triggered.

Section 110(k)(5) of the CAA provides that after EPA makes a finding that a plan is substantially inadequate, it may establish a reasonable deadline for the state to submit SIP revisions correcting the deficiencies, but the date cannot be later than 18 months after the state is notified of the finding. Consistent with this provision, EPA proposes to require the submittal within 18 months following any final finding of substantial inadequacy. EPA proposes that the 18-month period would begin on the effective date of the final rulemaking. EPA seeks comments on the proposed deadline and on whether an alternate deadline should be established.

EPA is proposing to require the state to establish a specific date in its SIP revision by which the Muscatine area will attain the standard. The date must be as expeditious as practicable based upon implementation of Federal, state and local measures. As discussed previously, we expect that the date will be no later than the beginning of the calendar year after the implementation of controls necessary for attainment (two years after the finding of substantial inadequacy and SIP Call). EPA will establish a specific date for attainment at the same time it takes final action on the state's SIP revision.

Notwithstanding the date for attainment, the 2006 24-hour $PM_{2.5}$ standard can only be achieved when the average of three consecutive years of data shows those $PM_{2.5}$ concentrations are at or below the levels of the 2006 24-hour standard.

**III. What action is EPA proposing?**

EPA proposes the following actions relating to the Iowa SIP for $PM_{2.5}$ for Muscatine County. EPA proposes to:

1. Find that the SIP is substantially inadequate to maintain the NAAQS for 24-hour $PM_{2.5}$ in the area;
2. Require that Iowa revise and submit to EPA a SIP to meet all of the applicable requirements of section 110 of the Act with respect to $PM_{2.5}$ in the area, including an emissions inventory, modeled attainment demonstration, adopted control measures and contingency measures as described in this proposal;
3. Require the state to submit revisions to the SIP within 18 months of the effective date of the final SIP Call determination;
4. Require that all adopted measures to achieve reductions determined necessary to attain and maintain the 2006 24-hour $PM_{2.5}$ standard be implemented no later than two years after the issuance of the SIP Call determination.
5. Require that the SIP provide for attainment and maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS in the Muscatine County, IA area as expeditiously as practicable, which EPA expects to be no later than the beginning of the calendar year after the implementation of controls necessary for attainment (two years after the finding of substantial inadequacy and SIP Call).

We are soliciting comments on these proposed actions. Final rulemaking will occur after consideration of any comments.

**IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, a finding of substantial inadequacy and subsequent obligation for a state to revise its SIP arise out of section 110(a) and 110(k)(5). The finding and state obligation do not directly impose any new regulatory requirements. In addition, the state obligation is not legally enforceable by a court of law. EPA would review its intended action on any SIP submittal in response to the finding in light of applicable statutory and Executive Order requirements, in subsequent rulemaking acting on such SIP submittal. For those reasons, this proposed action:

• Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the finding of SIP inadequacy would not 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.

## V. Statutory Authority

The statutory authority for this action is provided by sections 110 and 301 of the CAA, as amended (42 U.S.C. 7410 and 7601).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Iowa, Particulate matter, State Implementation Plan.

Dated: *February 10, 2011.*

**Karl Brooks,**

*Regional Administrator, Region 7.*

[FR Doc. 2011–3862 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Chapter I

**[EPA–09–0W–2010–0976–FRL–9268–5]**

**RIN–2009–ZA00**

## Water Quality Challenges in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

**AGENCY:** Environmental Protection Agency.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is publishing an advance notice of proposed rulemaking (ANPR) to seek comments from interested parties on possible EPA actions to address water quality conditions affecting aquatic resources in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay Delta Estuary) in California. EPA is asking the public to consider broadly whether EPA should be taking new or different actions under its programs to address recent significant declines in multiple aquatic species in the Bay Delta Estuary. EPA is not limiting its request to actions that would require rulemaking. There may be a range of changes in EPA's activities in the Bay Delta Estuary that would be constructive, including enforcement, research, revisions to water quality standards, etc. EPA will consider all comments before deciding what changes, if any, should be pursued. After reviewing the comments and completing its evaluation, EPA will provide the results of its review and any proposed next steps to the public. This ANPR identifies specific issues on which EPA solicits comment, including potential site-specific water quality standards and site-specific changes to pesticide regulation. In addition to the specific issues on which EPA solicits comments, EPA is interested in comments on any other aspects of EPA's programs affecting Bay Delta Estuary aquatic resources. This notice contains a summary version of the ANPR. Information on accessing the unabridged version is included in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Written comments must be submitted by April 25, 2011.

**ADDRESSES:** Written comments, identified by docket number EPA–R09–OW–2010–0976, may be submitted electronically at the *Federal Rulemaking Portal* (*http://www.regulations.gov*). Hard copy comments should be addressed to Erin Foresman, U.S. Environmental Protection Agency, 75 Hawthorne Street, WTR–3, San Francisco, California 94105. See **SUPPLEMENTARY INFORMATION** for file formats and other information about filing.

*Filing Instructions:* All comments will be included in the public docket without change and will be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *Regulations.gov* is an "anonymous access" system and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

*Docket:* The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with Erin Foresman, *foresman.erin@epa.gov,* (916) 557–5253.

**FOR FURTHER INFORMATION CONTACT:** Erin Foresman at U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105; *foresman.erin@epa.gov,* (916) 557–5253.

**SUPPLEMENTARY INFORMATION:** Detailed information describing the current state of Bay Delta Estuary aquatic resources, summaries of scientific knowledge regarding Bay Delta Estuary water quality stressors, and water quality regulatory and non-regulatory activities in the Bay Delta Estuary is contained in the Unabridged ANPR provided on EPA Region 9's Web site (*http://www.epa.gov/region9/water/watershed/sfbay-delta/index.html*) and in the electronic docket available at *http://*

*www.regulations.gov,* docket number EPA–R09–OW–2010–0976. EPA suggests reviewing this document prior to submitting comments.

This ANPR has no regulatory impact or effect. The ANPR contains descriptions of certain EPA programs relevant to the Bay Delta Estuary and poses questions about how these programs could better protect and improve water quality for the benefit of aquatic resources in the Bay Delta Estuary. This ANPR marks the beginning of a process to consider possible changes to EPA programs in the Bay Delta Estuary.

If EPA decides to pursue regulatory changes as a result of this ANPR, those regulatory changes will be made pursuant to appropriate formal rulemaking procedures. If changes to any regulations, rules, guidance or statutes are proposed and ultimately made final, to the extent such changes would require and/or authorize changes to state or tribal water quality standards or other regulations, states or authorized tribes would be affected. If changes to state or tribal regulations result from any final rule that EPA may promulgate in the future, entities subject to compliance with state or tribal regulations would also potentially be affected. For example, states and tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) Permit Program would need to ensure that permits they issue include any limitations on discharges necessary to comply with any water quality standards established as a result of any subsequent final rulemaking. Therefore, entities discharging pollutants to waters of the United States under NPDES could be affected by subsequent proposed and final rulemaking.

## I. Purpose of This ANPR

The Bay Delta Estuary is a complex web of waterways, islands, and levees at the junction of the San Francisco Bay and the Sacramento and San Joaquin Rivers.[1] The Bay Delta Estuary is the hub of California's water distribution system, supplying some or all of the drinking water to 25 million people and irrigation water to 4 million acres of farmland.

Water quality and aquatic resources in the Bay Delta Estuary are under serious stress. All of the waters of the Bay Delta Estuary and most of its tributaries are listed as impaired for one or more parameters under the federal Clean Water Act.[2] Populations of many formerly abundant open-water (*i.e.,* pelagic) fish species, including delta smelt, longfin smelt, and threadfin shad, have collapsed in recent decades. Anadromous[3] fishes, including the winter run chinook salmon, have suffered a similar decline. The decline of these aquatic resources has generated debate over water resource management in the Bay Delta Estuary. Delta interests, including state and federal agencies, environmental groups, urban and agricultural water users, commercial and recreational fishermen, and others have spent many years grappling with Bay Delta Estuary resource issues.

Concerns regarding Bay Delta Estuary water resource management increased during the 2009 water year[4] as water users and resource managers struggled with the effects of three years of drought. Water export limitations caused by the drought and by restrictions imposed under the federal Endangered Species Act (ESA)[5] to assist struggling endangered species significantly reduced the availability of water for agricultural and urban uses.[6] At the same time, the salmon fishery was closed on most of the West Coast for a second consecutive year as a result of declines in that fishery. Both the agricultural and fishery sectors suffered job losses as a result of the drought and the water export restrictions.

The federal government responded to this ongoing water management crisis with a broad set of actions.[7] One of those actions was the creation of the Federal Bay Delta Leadership Committee, a Cabinet-level, multi-agency committee charged with coordinating federal responses to Bay Delta Estuary issues.[8] The Federal Bay Delta Leadership Committee released its Interim Federal Action Plan for the California Bay-Delta (Federal Action Plan) on December 22, 2009, outlining the federal government's plan to address the Bay Delta Estuary and to work with the State of California to build a sustainable water future.[9] The Federal Action Plan includes actions by EPA to "assess the effectiveness of the current regulatory mechanisms designed to protect water quality in the Delta and its tributaries, including standards for toxics, nutrients, and estuarine habitat protection." EPA will also evaluate voluntary mechanisms that may be used to restore water quality in the Bay Delta Estuary. This ANPR is the beginning of this assessment.

New scientific information about the Bay Delta Estuary and its aquatic resources has substantially increased in the past few years. This information has been developed and/or reviewed in reports[10] synthesizing information on aquatic resources and water quality by the following entities: the State/Federal Interagency Ecological Program Pelagic Organism Decline science team,[11] the State's Delta Vision Blue Ribbon Task Force, the Public Policy Institute of California, the U.S. Fish and Wildlife Service and National Marine Fisheries Service as part of their biological opinions and associated independent science reviews, the California State Water Resources Control Board (State Board) and the Central Valley Regional Water Quality Control Board (Central Valley RWQCB).[12] Most of these studies and reports involve resources protected

[1] There is no commonly accepted precise geographic definition of the Bay Delta Estuary. The "legal Delta" is well-defined for purposes of the California Delta Protection Commission and related California statutes, but is not co-terminous with the functioning estuary. This ANPR will generally refer to the larger estuary upstream of the San Francisco Bay as the Bay Delta Estuary or the Estuary. It will also refer to the Delta, which usually means the "legal Delta" plus Suisun Marsh and Suisun Bay. Occasionally, this ANPR may also reference the Bay Delta Estuary watershed, which is a huge land area that includes the drainages of the Sacramento and San Joaquin River basins.

[2] Clean Water Act, 33 U.S.C. 1281–1387 (2006).

[3] "Anadromous" species are those, such as chinook salmon and steelhead, that spend at least some of their life cycle in salt water. Usually, these species return to freshwater to spawn.

[4] Water years in California are defined as October 1 through the following September 30. For example, the 2011 water year began October 1, 2010 and continues through September 30, 2011. Water years in California are categorized based on the particular rainfall that year. The categories are wet, above normal, below normal, dry, and critically dry.

[5] Endangered Species Act, 16 U.S.C. 1531–1544 (2006).

[6] *See* Cal. Dep't of Water Res. & Bureau of Reclamation, Water Supply Conditions 2009 (Aug., 2009), *available at http://www.water.ca.gov/news/newsreleases/2009/08122009martinmilligan2.pdf* (suggests that approximately a quarter (500 thousand acre feet) of the 2.1 million acre feet water export shortfall in 2009 was due to new environmental restrictions, whereas three quarters (1.6 million acre feet) of the shortfall was due to the drought itself).

[7] *See* Press Release, U.S. Dep't of the Interior, Secretary Salazar, Senior Administration and Congressional Officials Hold Town Hall Meeting on California Water Shortage (June 28, 2009), *available at http://www.doi.gov/news/pressreleases/2009_06_28_release.cfm* (discussing several water augmentation initiatives).

[8] California Bay-Delta Memorandum of Understanding among Federal Agencies (Sept. 29, 2009), *available at http://www.doi.gov/documents/BayDeltaMOUSigned.pdf.*

[9] Interim Federal Action Plan for the California Bay-Delta (Dec. 22, 2009), *available at http://www.doi.gov/documents/CAWaterWorkPlan.pdf.*

[10] Citations to these many reports and reviews are provided in the Unabridged ANPR, as each issue is discussed in detail.

[11] Randall Baxter, *et al.,* Pelagic Organism Decline Progress Report: 2010 Synthesis of Results (2010), *available at http://www.water.ca.gov/iep/docs/FinalPOD2010Workplan12610.pdf.*

[12] The State Board, Central Valley RWQCB, and San Francisco Regional Water Quality Control Board (San Francisco RWQCB) will sometimes be referred to collectively as the "Water Boards."

under the Clean Water Act and other EPA programs.

EPA is using this ANPR to solicit and synthesize existing scientific information regarding the biological, chemical, and physical integrity of the Bay Delta Estuary's aquatic resources. EPA will comprehensively review this information as it evaluates its statutory and regulatory options in the Bay Delta Estuary and will develop an appropriate response. Specifically, the purposes of this ANPR are:

(1) To review the current status of the EPA and Water Boards' [13] responses to adverse water quality conditions that have been identified as potential contributors to the Bay Delta Estuary's aquatic resources decline;

(2) To determine how best to implement existing programs under the Clean Water Act and the Federal Insecticide, Fungicide and Rodenticide Act [14] to improve Bay Delta Estuary water quality for aquatic resources;

(3) To identify barriers, either programmatic or statutory, to improving Bay Delta Estuary water quality;

(4) To identify any additional scientific information regarding water quality related to aquatic resources in the Bay Delta Estuary; and

(5) To solicit input on whether EPA should be taking new or different actions under its programs to address aquatic resource problems in the Bay Delta Estuary.

Specific topics on which EPA is requesting comments appear in the sections below.

*Related Efforts in the Bay Delta Estuary*

There are several major efforts underway to address Bay Delta Estuary resources, including the regulatory programs of the Water Boards under state and federal water quality statutes. In July 2008, the Water Boards adopted a Strategic Workplan to coordinate and guide their Bay Delta Estuary activities.[15] Over the next several years, these state activities will include, among others, multiple point source permit renewals, new pollutant and flow standards for the southern Delta and lower San Joaquin River, and Total Maximum Daily Loads (TMDLs) for pesticides in the Central Valley. EPA continues to support many of the elements in the State's Workplan through technical and financial assistance.

Any EPA action taken as a result of this ANPR will complement the Water Boards' actions, as EPA's priority is to support and augment these efforts. As these efforts unfold, EPA will monitor their progress and determine whether additional actions, consistent with its statutory authorities and responsibilities, are needed to ensure that the requirements of the Clean Water Act are satisfied. Finally, regardless of whether EPA pursues any new actions as a result of this ANPR, EPA believes the information gathered through the ANPR process may provide a factual basis for EPA's ongoing activities under the Clean Water Act, the National Environmental Policy Act,[16] and other federal statutes in the Bay Delta Estuary.

There are other federal and state water resource planning efforts underway in the Bay Delta Estuary. Stakeholders and relevant government agencies are engaged in developing the Bay Delta Conservation Plan (BDCP) under the federal Endangered Species Act and the California Natural Community Conservation Plan Act.[17] The BDCP focuses on the recovery of ESA-listed species and their habitat in the Bay Delta Estuary and is expected to include major proposals for changing how water is diverted and conveyed through the Bay Delta Estuary to the state and federal water export facilities in the south Delta.[18] The EPA's responsibilities under the Clean Water Act to protect designated uses, such as estuarine habitat, fish migration, and threatened and endangered species, overlap with ESA requirements being addressed in the BDCP. Some actions taken pursuant to the BDCP will need to comply with both the ESA and Clean Water Act. To that end, EPA will ensure that any action it might take as a result of this ANPR will be closely coordinated with other federal and state actions related to the BDCP, any biological opinions on water operations affecting the Bay Delta Estuary, and any other actions requiring ESA compliance.

In addition, recent state legislation has established the Delta Stewardship Council (DSC), an independent state agency charged with developing a comprehensive resource management plan, the Delta Plan, by January 2012.[19] The Delta Plan is intended to guide state and local agencies to help achieve the state's coequal goals of a reliable water supply and a restored Delta ecosystem. To inform the Delta Plan, the DSC's Independent Science Board will evaluate the multiple stressors in the Bay Delta Estuary.[20] Any EPA action taken as a result of this ANPR will also be coordinated with this and other related efforts.

The National Academy of Sciences (NAS) has initiated a review of some aspects of the science supporting ESA protections in the Bay Delta Estuary. Much of that scientific information is also relevant to Clean Water Act programs. Accordingly, EPA is coordinating with the NAS to assure that scientific evaluations serve the multiple regulatory programs in the Bay Delta Estuary.

*Scope of This ANPR*

This ANPR is focused on the most significant water quality factors adversely affecting aquatic species designated uses in the Bay Delta Estuary. Aquatic species, specifically the salmonids and pelagic species suffering significant population collapse during the last decade, brought the Bay Delta Estuary's water resource management issues into sharp focus in recent years. EPA recognizes that the Bay Delta Estuary supports over 750 species of fish, mammals, birds, reptiles, amphibians, invertebrates, and plants, and that forty or more of these species are listed under state and/or federal endangered species laws.[21] This ANPR is focused on aquatic species designated uses for waterbodies in the Bay Delta Estuary, but welcomes comment on how

[13] Much of EPA's statutory mandate is to perform oversight and review of state water quality agency activities.

[14] Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136–136y (2006).

[15] State Water Res. Control Bd., Cent. Valley Water Bd., & San Francisco Bay Water Bd., Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (2008), *available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/strategic_plan/docs/baydelta_workplan_final.pdf.*

[16] National Environmental Policy Act, 42 U.S.C. 4321–4370f (2006).

[17] Natural Community Conservation Plan Act, Cal. Fish & Game Code § 2800–2835 (2003).

[18] Although the scope of the BDCP covers at least nine listed aquatic species and a geographic area of over one-half million acres, the BDCP is not intended to be a comprehensive Delta recovery plan. By its own terms, it is intended to meet ESA requirements by addressing only the operations of the state and federal water export projects and their impacts on listed species and their habitat.

[19] Cal. Water Code § 85300–85350 (2010).

[20] Letter from Delta Independent Science Board to Phil Isenberg, Chair, Delta Stewardship Council (Jan. 26, 2011), *available at http://www.deltacouncil.ca.gov/delta_science_program/pdf/isb/d-isb_20110126_stressor_short_memo_final.pdf.*

[21] Delta Vision Blue Ribbon Task Force, Delta Vision Strategic Plan (Oct. 2008), *available at http://deltavision.ca.gov/StrategicPlanningProcess/StaffDraft/Delta_Vision_Strategic_Plan_standard_resolution.pdf;* Estimate of federal and state endangered and threatened species based on discussion with U.S. Fish & Wildlife Service biologists; Bay Delta Conservation Plan, Steering Committee Working Draft (Nov. 18, 2010), available at *http://baydeltaconservationplan.com/Libraries/Whats_in_Plan/draft_BDCPreport_11292010_ClickableLinks7.pdf;* CALFED Bay Delta Program, Multi-Species Conservation Strategy, Final Programmatic EIS (July 7, 2000), *available at http://dfg.ca.gov/erp/envcomp_mscs.asp.*

other species are being affected by water quality.

This ANPR does not comprehensively discuss water quality issues related to other designated uses, including drinking water, recreation, fish consumption, agriculture, etc. For example, water contact has been restricted in certain Bay Delta Estuary waters due to toxic blue-green algae blooms. EPA acknowledges the ongoing need to address these other issues.

## II. Program Areas for Public Comment

In this ANPR, EPA is asking the public to consider broadly whether EPA should take new or different actions under its programs to address problems in the Bay Delta Estuary. EPA is not limiting its request to actions that would require actual rulemaking; there may be a range of changes in EPA's activities in the Bay Delta Estuary that would be constructive, including enforcement, research, revisions to water quality standards, etc. Any change in EPA activities would be dependent on existing authority and the availability of existing or new resources. Any changes requiring EPA rulemaking would provide for public comment through the notice and comment rulemaking process.

A substantial amount of research was performed and evaluated in connection with the scientific review of the pelagic organism decline. As noted above, that process identified a number of potential stressors affecting the Bay Delta Estuary aquatic ecosystem. Many of those potential stressors are directly or indirectly affected by the EPA programs described above. EPA has identified certain topics for more focused consideration in this ANPR. These are:

—Ammonia
—Selenium
—Pesticides
—Contaminants of Emerging Concern
—Estuarine Habitat
—Fish Migration Corridors
—Wetlands

EPA has not made any attempt to rank these topics as to their importance in resolving Bay Delta Estuary issues.[22] EPA's preliminary evaluation suggests that each of these topics, if addressed, could contribute to a resolution of Bay Delta Estuary resource conflicts. While this ANPR discusses these topics separately, EPA is mindful that the more significant concern is the cumulative and interactive effects of multiple stressors on the Bay Delta Estuary's aquatic inhabitants. Commenters may also identify additional topics that impact Bay Delta Estuary resource management, if EPA has some programmatic involvement in the topic.

Many activities discussed in this notice have been or are now the subject of a formal or informal rulemaking process conducted by either EPA or a related state or federal agency. Nothing in this notice is intended to supersede those ongoing processes, nor does this notice constitute a decision under any of those processes. If commenters have submitted material in connection with those other processes that is believed to be relevant to the issues raised in this notice, the commenter may either reference the earlier submission (if it was submitted to EPA), attach the earlier submission (if it was submitted to a different agency), or, if appropriate, provide a link to the material online. Please provide the reason(s) for answers to the following questions and scientific, policy, and/or legal information with citations that support your comments.

### *A. Contaminants*

#### 1. Contaminants—General

a. Are there contaminants, other than those named above, causing adverse impacts to aquatic resource designated uses in the Bay Delta Estuary and that should receive more focused review?

b. How can pollutant-specific water quality criteria effectively address or incorporate interactive effects between multiple contaminants and other physical, chemical, and biological stressors?

c. What methods can be used in developing and implementing TMDLs to effectively address or incorporate interactive effects between multiple contaminants and other physical, chemical, and biological stressors on individual water bodies or for water bodies within a watershed?

d. What information exists about how climate change impacts will affect contaminant pollution (generally or for individual contaminants)?

#### 2. Ammonia: Toxic and Nutrient Effects

a. What, if any, information is available on the sources or impacts of total ammonia nitrogen in the Bay Delta Estuary that is not reflected or cited above?

b. Is there any information available that suggests site-specific water quality standards for total ammonia nitrogen in the Bay Delta Estuary may be more effective than current standards due to unique hydrological, chemical, biological, or physical conditions?

c. What information is needed to determine effective site-specific water quality standards for total ammonia nitrogen, including narrative or numeric criteria?

d. What information is available on nonpoint sources of total ammonia nitrogen and how they may most effectively and efficiently be controlled?

#### 3. Selenium

a. What, if any, additional information is available to better characterize selenium sources, loadings and impacts within the watershed of the Bay Delta Estuary?

b. What data, studies, and analytical techniques (for example, models) could be used to improve our understanding of the physical processes, including surface-groundwater interactions, controlling selenium mobilization and transport to and within the Bay Delta Estuary?

c. What data are needed to track selenium impacts in the Bay Delta ecosystem as currently configured, and to evaluate potential impacts of selenium under changed flow and transport conditions into and within the Delta?

d. Are there additional selenium control methods or programs that should be considered for reducing selenium inputs and impacts?

#### 4. Pesticides

a. What, if any, additional scientific information is available on (a) the effects of pesticides in stormwater discharges, or (b) the potential interactive effects of combinations of pesticides on aquatic resources in the Bay Delta Estuary?

b. What, if any, actions should EPA take under its authority to improve the effectiveness of regulating pesticide contamination of the Bay Delta Estuary watershed?

c. How can the process for establishing numeric water quality criteria be streamlined while maintaining technical integrity?

d. What are the benefits and constraints of using fish tissue in place of or in addition to water column concentrations when establishing water quality criteria for pesticides?

e. Are there testing protocols that would effectively and efficiently identify synergistic toxic effects in the Bay Delta Estuary?

[22] The National Research Council panel currently evaluating several Bay Delta Estuary science issues may be "ranking" factors associated with the decline of ESA listed species and other at-risk species. That ranking and the associated report is not due until 2011. Similarly, the Delta Independent Science Board has initiated a process to evaluate and rank the relative importance of multiple stressors and, especially, to consider the interactive effects of these multiple stressors. *See* Delta Stressors Workshop, Meeting Notice (Dec. 30, 2010), *available at http://www.deltacouncil.ca.gov/delta_science_program/pdf/isb/d-isb_2011_01_workshop_stressors_mtg_notice_122810.pdf.*

f. What, if any, specific combinations of contaminants are of particular concern in the Bay Delta Estuary?

g. Should EPA and our state partners move away from evaluating isolated aquatic species for one or two pollutants, and towards evaluations of water conditions more representative of the actual aquatic conditions in the Bay Delta Estuary? How might this be done?

h. What new or revised effluent limitations, monitoring requirements or other permit requirements could be included in NPDES permits for discharges of pesticides from Municipal Separate Storm Sewer Systems (MS4s) in the Bay Delta Estuary in order to better meet the regulatory standard of reducing discharges to the maximum extent practicable? What information is necessary to determine permit requirements, such as identifying effluent limits that can effectively reduce ambient contaminant concentrations and restore designated uses? Please provide any available information on water quality benefits that may result from such requirements.

i. What new or revised effluent limitations, monitoring requirements or other permit requirements could be included in NPDES permits for stormwater discharges associated with construction activity and/or stormwater discharges associated with industrial activity to address pesticides? What information is necessary to determine permit requirements, such as identifying effluent limits that can effectively reduce ambient contaminant concentrations and restore designated uses? Please provide any available information on water quality benefits that may result from such requirements.

j. Should EPA use its residual designation authority at 40 CFR 122.35 to designate currently unregulated small MS4s to ensure that municipalities have programs in place to control the discharge of pesticides in stormwater to the maximum extent practicable? What information is necessary to determine permit requirements, such as identifying effluent limits that can effectively reduce ambient contaminant concentrations and restore designated uses? Please provide any available information on water quality benefits that may result from such requirements.

k. Should EPA use its residual designation authority at 40 CFR 122.26(a)(9)(i)(C)–(D) to designate currently unregulated stormwater discharges that contribute pesticides to surface waters? What information is necessary to determine permit requirements, such as identifying effluent limits that can effectively reduce ambient contaminant concentrations and restore designated uses? Please provide any available information on water quality benefits that may result from such requirements.

5. Contaminants of Emerging Concern

a. What, if any, additional information is available regarding the effects of CECs on aquatic resources in the Bay Delta Estuary?

b. What, if any, specific information exists to identify the sources and nature of discharges of CECs into the Bay Delta Estuary?

c. What, if any, monitoring mechanisms or methodologies are available to assist in identifying CECs?

d. What, if any, methods are most effective to minimize introduction of CECs into the Bay Delta Estuary?

*B. Protecting Estuarine Habitat, Fish Migration Corridors and Wetlands*

1. Estuarine Habitat

a. What information is available on the effect of lower salinities in the western Delta on undesirable species, such as *Microcystis,* overbite clams, or jellyfish? What, if any, information is available to determine if an increase in low salinity habitat would affect the fate, concentration and distribution of nutrients and toxics that are potentially negatively affecting the estuarine food web?

b. Could the frequency, area, and/or duration of low salinity habitat be changed so as to achieve ecosystem benefits for the suite of species that use the low salinity zone? If so, how? Is historical data on inter- or intra- annual frequency of variability the best basis for setting goals or are there other bases that could be used? How might climate change impacts, including sea level rise, affect the size, frequency, and duration of low salinity habitat?

c. Are methods available for more systematically addressing ecological or biological connections between springtime locations of low salinity habitat and subsequent conditions of the low salinity zone in the fall? If so, what are they and what are their strengths and weaknesses?

d. Would changes in water system operations to move the low salinity zone seaward in the fall adversely affect the reservoir storage needed to conserve salmonid fish spawning and other designated uses in the watershed? If so, under what conditions?

e. What information is available on the effects of salinity management on terrestrial plant communities and/or tidal marsh endemic species? What indirect effect does this have on aquatic communities?

f. Does the geographic location of low salinity habitat have an effect on the quality of the habitat or its availability to species of concern? If so, what is the nature and extent of such effect? Is the distribution pattern of low salinity habitat important in determining its quality?

g. Are spring/neap differences in tidal water quality important for aquatic species? If so, how should these habitat characteristics be evaluated?

h. How can performance measures for species population and/or habitat condition be used to evaluate restoration of Bay Delta Estuary water quality?

2. Fish Migration Corridors

a. What role, if any, do gradients in physical and chemical constituents of water play in the suitability of the Bay Delta Estuary and San Joaquin River Basin migratory corridor for salmon?

b. What are the best measures of success for restoration of a migratory corridor? Could these measures be incorporated into new or revised biological criteria protecting the fish migration designated use?

c. Should temporal characteristics be included in the definition of the physical and/or chemical properties of a migration corridor based on a reference condition? If so, how? What frequency and duration of such a corridor is required for salmonids? How might these characteristics change with the impacts of climate change?

d. Would establishing a migratory corridor for upmigrating adult chinook salmon succeed in improving adult migration success if temperatures in the river channels upstream of Vernalis are unchanged? If so, how? How might actions to establish a migratory corridor in the south Delta also moderate temperature and/or dissolved oxygen problems in the San Joaquin River?

e. Are additional efforts to improve dissolved oxygen regimes in the Delta necessary to provide an adequate migratory corridor for San Joaquin salmonids? If so, what should those efforts include?

f. What other information is available on the barriers to salmon migration in the Bay Delta Estuary and San Joaquin River watershed?

3. Wetlands

a. What different approaches under the Clean Water Act Section 404 program should EPA consider, in consultation with the U.S. Army Corps of Engineers, to improve the protection of aquatic resource functions in the Bay Delta Estuary?

b. What information exists that describes the relationship between the quantity and quality of wetlands and Bay Delta Estuary water quality and fish populations?

c. In light of projected impacts of climate change (including sea level rise and its effects on levee stability), what specific activities can EPA undertake to improve long-term protection of existing and future wetlands, especially those resources on subsided islands?

### III. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51,735, October 4, 1993), this is a "significant regulatory action". Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

Because this action does not propose or impose any requirements and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and Executive Orders as applicable to that rulemaking.

Dated: February 10, 2011.

**Jared Blumenfeld,**

*Regional Administrator, U.S. Environmental Protection Agency, Region 9.*

[FR Doc. 2011–3861 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1170]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On January 7, 2011, FEMA published in the **Federal Register** a proposed rule that included an erroneous Base Flood Elevation (BFE) for the Skykomish River in Snohomish County, Washington. The BFE currently in effect for the location approximately 216 feet downstream of Burlington Northern Santa Fe Railway should have been listed as 355 feet, referenced to the North American Vertical Datum of 1988.

**DATES:** Comments pertaining to the Skykomish River BFE for the location approximately 216 feet downstream of Burlington Northern Santa Fe Railway are to be submitted on or before May 23, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA–B–1170, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *rodriguez1@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

### Correction

In the proposed rule published at 76 FR 1121, in the January 7, 2011, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled "Snohomish County, Washington, and Incorporated Areas" addressed several flooding sources, including the Skykomish River. The proposed rule incorrectly listed the effective BFE for the Skykomish River, for the location approximately 216 feet downstream of Burlington Northern Santa Fe Railway. The effective BFE for that location was listed as 359 feet, referenced to the North American Vertical Datum of 1988. The correct effective BFE is 355 feet, referenced to the North American Vertical Datum of 1988. The proposed modified BFE was correctly listed as 351 feet, referenced to the North American Vertical Datum of 1988. This proposed rule correction is reopening the comment period for the Skykomish River, for the location approximately 216 feet downstream of Burlington Northern Santa Fe Railway, due to the error in listing the effective BFE in the previously published proposed rule at 76 FR 1121.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 11, 2011.

**Sandra K. Knight,**

*Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2011–3865 Filed 2–18–11; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Parts 211 and 252

**RIN 0750–AH05**

## Defense Federal Acquisition Regulation Supplement; Passive Radio Frequency Identification (DFARS Case 2010–D014)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements relating to the use of passive Radio Frequency Identification (RFID).

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before April 25, 2011, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2010–D014, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2010–D014" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2010–D014." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2010–D014" on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2010–D014 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–1302; facsimile 703–602–0350.

**SUPPLEMENTARY INFORMATION:**

## I. Background

This DFARS case was initiated at the request of the Office of Logistics and Materiel Readiness (L&MR) of the Office of the Secretary of Defense (Acquisition, Technology, and Logistics) to revise DFARS 211.275, Radio frequency identification, to—

—Clarify that the RFID requirement pertains solely to "passive RFID";

—Supply a link to a web site in lieu of individually listing ship-to addresses;

—Enable contracting officers to add tagging requirements to contracts shipping to DoD Activity Address Codes (DoDAACs) not specifically listed at the web site;

—Make pharmaceuticals subject to the Class VIII RFID tagging requirements; and

—Revise the clause at 252.211–7006, including the title, to reflect the changes above.

As the use of passive RFID technology continues to expand and additional DoD sites gain the capability to use RFID identifier tags, the DFARS regulations associated with passive RFID are being proposed for complementary updates.

First, DFARS 211.275 is being renamed and revised to clarify that the DoD RFID requirement relates solely to "passive RFID", which is defined in the associated clause 252.211–7006(a).

The current DFARS lists approximately 20 specific DoD activity addresses and provides the authority for using other ship-to locations "outside the contiguous United States" under certain circumstances. However, the Defense Logistics Agency and the Navy have proposed adding more than 200 additional sites, making it impracticable to list all DoD passive RFID addresses in the DFARS text or its associated clause. Instead, a website is proposed to be added so that contractors can refer to the website to find the RFID identifier for each specific DoD ship-to address that uses RFID technology. The new website referenced in the DFARS has the added benefit of enabling the addition of new ship-to addresses in the future without the need to revise the DFARS in each instance. DoD proposes to amend the revised shortened list of ship-to addresses at DFARS 211.275–2(a)(2) to allow contracting officers to add tagging requirements to contract deliverables shipping to DoD activity address codes not specifically included in the list, as needed.

Also, the DFARS currently excludes shipments of pharmaceuticals from the Class VIII RFID tagging requirements. Changes are proposed that will include shipments of pharmaceuticals in the requirement for passive RFID tags. To date, this requirement has been informally effected via contract-specific provisions.

## II. Executive Order 12866

This is a significant regulatory action and, therefore, it was subject to review under Section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not add to or delete the existing regulations on RFID use. However, DoD has performed a regulatory flexibility analysis to address the proposed rule changes, which are summarized as follows.

The current DFARS lists approximately 20 specific DoD activity addresses and provides the authority for using other ship-to locations "outside the contiguous United States" under certain circumstances. However, the Defense Logistics Agency and the Navy have proposed adding more than 200 additional sites, making it impracticable to list all DoD passive RFID addresses in the DFARS text or its associated clause. Instead, a web site is proposed to be added so that contractors can refer to the web site to find the RFID Identifier for each specific DoD ship-to address that uses RFID technology. Including the web site in the DFARS has the added benefit of enabling the addition of new ship-to addresses in the future as necessary without the need to revise the DFARS in each case. DoD proposes to amend the revised, shortened list of ship-to addresses at DFARS 211.275–2(a)(2) to allow contracting officers to add tagging requirements to contract deliverables shipping to DoDAACs not specifically included in the list as they deem necessary.

The current OMB information collection justification for the clause associated with the current DFARS, 252.211–7006, entitled "Radio Frequency Identification," lists the number of contractors impacted by the RFID requirement as 25,500. While each contractor has multiple submissions (one for each shipment), it takes only 1.12 seconds per response. The changes proposed should decrease the response time, not increase it. Therefore, any impact to small businesses will be both positive and minimal.

The only alternative to the proposed rule is to leave the current DoD RFID requirements intact. However, that alternative would not minimize the economic impact on small entities, as does the proposed rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2010–D014) in correspondence.

## IV. Paperwork Reduction Act

There are information collection requirements associated with the use of RFIDs. However, there will be no change to the existing information collection requirements currently approved under OMB Information Control Number 0704–0434, DFARS;

Radio Frequency Identification Advance Shipment Notices. Therefore, DoD has determined that the proposed rule, if adopted as a final rule, would have no material impact on the approved collection. However, DoD will accept comments on how the rule would impact either the burden or other aspects of the approved information collection.

**List of Subjects in 48 CFR Parts 211 and 252**

Government procurement.

**Mary Overstreet,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 211 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## PART 211—DESCRIBING AGENCY NEEDS

2. Section 211.275–1 is revised to read as follows:

### 211.275–1 Definitions.

"Bulk commodities," "case," "palletized unit load," "passive RFID tag," and "radio frequency identification" are defined in the clause at 252.211–7006, Passive Radio Frequency Identification.

3. Section 211.275–2 is revised to read as follows:

### 211.275–2 Policy.

(a) Except as provided in paragraph (b) of this section, radio frequency identification (RFID), in the form of a passive RFID tag, is required for cases and palletized unit load packaging levels and any additional consolidation level(s) deemed necessary by the requiring activity for shipments of items that—

(1) Contain items in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(i) Subclass of Class I—Packaged operational rations.

(ii) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(iii) Class IIIP—Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(iv) Class IV—Construction and barrier materials.

(v) Class VI—Personal demand items (non-military sales items).

(vi) Subclass of Class VIII—Medical materials, including pharmaceuticals (excluding biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

(vii) Class IX—Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(2) Will be shipped to one of the locations listed at *http://www.acq.osd.mil/log/rfid/* or to—

(i) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1; or

(ii) Any additional location(s) deemed necessary by the requiring activity.

(b) The following are excluded from the requirements of paragraph (a) of this section:

(1) Shipments of bulk commodities.

(2) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

4. Section 211.275–3 is revised to read as follows:

### 211.275–3 Contract clause.

(a) Use the clause at 252.211–7006, Passive Radio Frequency Identification, in solicitations and contracts that will require shipment of items meeting the criteria at 211.275–2.

(b) Complete paragraph (b)(1)(ii) of the clause at DFARS 252.211–7006 as appropriate.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.211–7006 is revised to read as follows:

### 252.211–7006 Passive Radio Frequency Identification.

As prescribed in 211.275–3, use the following clause:

**PASSIVE RADIO FREQUENCY IDENTIFICATION (DATE)**

(a) *Definitions.* As used in this clause—

*Advance shipment notice* means an electronic notification used to list the contents of a shipment of goods as well as additional information relating to the shipment, such as passive radio frequency identification (RFID) or item unique identification (IUID) information, order information, product description, physical characteristics, type of packaging, marking, carrier information, and configuration of goods within the transportation equipment.

*Bulk commodities* means the following commodities, when shipped in rail tank cars, tanker trucks, trailers, other bulk wheeled conveyances, or pipelines:

(1) Sand.

(2) Gravel.

(3) Bulk liquids (water, chemicals, or petroleum products).

(4) Ready-mix concrete or similar construction materials.

(5) Coal or combustibles such as firewood.

(6) Agricultural products such as seeds, grains, or animal feed.

*Case* means either a MIL–STD–129 defined exterior container within a palletized unit load or a MIL–STD–129 defined individual shipping container.

*Electronic Product Code™ (EPC®)* means an identification scheme for universally identifying physical objects via RFID tags and other means. The standardized EPC™ data consists of an EPC™ (or EPC™ identifier) that uniquely identifies an individual object, as well as an optional filter value when judged to be necessary to enable effective and efficient reading of the EPC™ tags. In addition to this standardized data, certain classes of EPC™ tags will allow user-defined data. The EPC™ Tag Data Standards will define the length and position of this data, without defining its content.

*EPCglobal®* means a subscriber-driven organization comprised of industry leaders and organizations focused on creating global standards for the adoption of passive RFID technology.

*Exterior container* means a MIL–STD–129 defined container, bundle, or assembly that is sufficient by reason of material, design, and construction to protect unit packs and intermediate containers and their contents during shipment and storage. It can be a unit pack or a container with a combination of unit packs or intermediate containers. An exterior container may or may not be used as a shipping container.

*Palletized unit load* means a MIL–STD–129 defined quantity of items, packed or unpacked, arranged on a pallet in a specified manner and secured, strapped, or fastened on the pallet so that the whole palletized load is handled as a single unit. A palletized or skidded load is not considered to be a shipping container. A loaded 463L System pallet is not considered to be a palletized unit load. Refer to the Defense Transportation Regulation, DoD 4500.9–R, Part II, Chapter 203, for marking of 463L System pallets.

*Passive RFID tag* means a tag that reflects energy from the reader/interrogator or that receives and temporarily stores a small amount of energy from the reader/interrogator signal in order to generate the tag response. The only acceptable tags are EPC Class 1 passive RFID tags that meet the EPCglobal™ Class 1 Generation 2 standard.

*Radio frequency identification (RFID)* means an automatic identification and data capture technology comprising one or more reader/interrogators and one or more radio frequency transponders in which data transfer is achieved by means of suitably modulated inductive or radiating electromagnetic carriers.

*Shipping container* means a MIL–STD–129 defined exterior container that meets carrier regulations and is of sufficient strength, by reason of material, design, and construction, to be shipped safely without further packing (e.g., wooden boxes or crates, fiber and metal

drums, and corrugated and solid fiberboard boxes).

(b)(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall affix passive RFID tags, at the case- and palletized-unit-load packaging levels, for shipments of items that—

(i) Are in any of the following classes of supply, as defined in DoD 4140.1–R, DoD Supply Chain Materiel Management Regulation, AP1.1.11:

(A) Subclass of Class I—Packaged operational rations.

(B) Class II—Clothing, individual equipment, tentage, organizational tool kits, hand tools, and administrative and housekeeping supplies and equipment.

(C) Class IIIP—Packaged petroleum, lubricants, oils, preservatives, chemicals, and additives.

(D) Class IV—Construction and barrier materials.

(E) Class VI—Personal demand items (non-military sales items).

(F) Subclass of Class VIII—Medical materials including pharmaceuticals, (excluding biologicals, and reagents—suppliers should limit the mixing of excluded and non-excluded materials).

(G) Class IX—Repair parts and components including kits, assemblies and subassemblies, reparable and consumable items required for maintenance support of all equipment, excluding medical-peculiar repair parts; and

(ii) Are being shipped to one of the locations listed at *http://www.acq.osd.mil/log/rfid/or* to—

(A) A location outside the contiguous United States when the shipment has been assigned Transportation Priority 1 or to—

(B) The following location(s) deemed necessary by the requiring activity:

| Contract line, subline, or exhibit line item number | Location name | City | State | DoDAAC |
|---|---|---|---|---|
| | | | | |

(2) The following are excluded from the requirements of paragraph (b)(1) of this clause:

(i) Shipments of bulk commodities.

(ii) Shipments to locations other than Defense Distribution Depots when the contract includes the clause at FAR 52.213–1, Fast Payment Procedures.

(c) The Contractor shall—

(1) Ensure that the data encoded on each passive RFID tag are globally unique (i.e., the tag ID is never repeated across two or more RFID tags) and conforms to the requirements in paragraph (d) of this clause;

(2) Use passive tags that are readable; and

(3) Ensure that the passive tag is affixed at the appropriate location on the specific level of packaging, in accordance with MIL–STD–129 (Section 4.9.2) tag placement specifications.

(d) *Data syntax and standards.* The Contractor shall encode an approved RFID tag using the instructions provided in the EPC™ Tag Data Standards in effect at the time of contract award. The EPC™ Tag Data Standards are available at *http://www.epcglobalinc.org/standards/.*

(1) If the Contractor is an EPCglobal™ subscriber and possesses a unique EPC™ company prefix, the Contractor may use any of the identifiers and encoding instructions described in the most recent EPC™ Tag Data Standards document to encode tags.

(2) If the Contractor chooses to employ the DoD identifier, the Contractor shall use its previously assigned Commercial and Government Entity (CAGE) code and shall encode the tags in accordance with the tag identifier details located at *http://www.acq.osd.mil/log/rfid/tag_data.htm.* If the Contractor uses a third-party packaging house to encode its tags, the CAGE code of the third-party packaging house is acceptable.

(3) Regardless of the selected encoding scheme, the Contractor with which the Department holds the contract is responsible for ensuring that the tag ID encoded on each passive RFID tag is globally unique, per the requirements in paragraph (c)(1).

(e) *Advance shipment notice.* The Contractor shall use Wide Area Workflow (WAWF), as prescribed in DFARS 252.232–7003, Electronic Submission of Payment Requests, to electronically submit advance shipment notice(s) with the RFID tag ID(s) (specified in paragraph (d) of this clause) in advance of the shipment in accordance with the procedures at *https://wawf.eb.mil/.*

(End of clause)

[FR Doc. 2011–3759 Filed 2–18–11; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 393

**[Docket No. FMCSA–2010–0271]**

**RIN–2126–AB30**

## Parts and Accessories Necessary for Safe Operation; Saddle-Mount Braking Requirements

**AGENCY:** Federal Motor Carrier Safety Administration, DOT.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) by eliminating the requirement for operational brakes on the last saddle-mounted truck or tractor in a triple saddle-mount combination, except when a full mount is present. This is in response to a petition for rulemaking from the Automobile Carriers Conference (ACC) of the American Trucking Associations. Currently, the FMCSRs require operational brakes on any wheel of a saddle-mounted vehicle that is in contact with the roadway. ACC contends that this requirement degrades the braking performance of these combinations because the lightly loaded axle of the last vehicle tends to lock up under heavy braking, and submitted test results supporting this position.

**DATES:** Send your comments on or before April 25, 2011.

**ADDRESSES:** You may submit comments identified by Docket ID Number FMCSA–2010–0271 by any of the following methods:

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

*Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

*Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday except Federal holidays.

*Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian J. Routhier, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–1225, or *brian.routhier@dot.gov,* 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents for Preamble**

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
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II. Legal Basis for the Rulemaking
III. Background
IV. Agency Analysis
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VI. Regulatory Analyses

## I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2010–0271), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "Submit a Comment" box, which will then become highlighted in blue. In the "Document Type" drop-down menu, select "Proposed Rules," insert "FMCSA 2010–0271" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

### *B. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the "Read Comments" box in the upper right-hand side of the screen. Then, in the "Keyword" box, insert "FMCSA–2010–0271" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

### *C. Privacy Act*

Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** notice published on April 11, 2000 (65 FR 19476).

## II. Legal Basis for the Rulemaking

This notice of proposed rulemaking (NPRM) is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935 provides that "The Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation" [49 U.S.C. 31502(b)].

The braking amendments proposed deal directly with the "safety of operation and equipment of * * * a motor carrier" [49 U.S.C. 31502(b)(1)] and "standards of equipment of * * * a motor private carrier" [49 U.S.C. 31502(b)(2)]. The proposal, adoption, and enforcement of such rules were authorized by the Motor Carrier Act of 1935. This proposal rests squarely on that authority.

The Motor Carrier Safety Act of 1984 (the 1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles." Although this authority is very broad, the Act also includes specific requirements: "At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely * * *; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators" [49 U.S.C. 31136(a)].

This proposal is based on the authority of the 1984 Act and addresses the specific mandates of 49 U.S.C. 31136(a)(1). Neither § 31136(a)(2), which deals almost entirely with the operational demands placed on drivers, nor § 31136(a)(3), which addresses driver physical qualification standards, is covered by this rulemaking. Section 31136(a)(4) deals with the effect of driving on driver health, a subject this proposal addresses indirectly: brake lockup on saddle-mount combinations, which the NPRM is intended to prevent, might under some circumstances cause the driver to lose control of the commercial motor vehicle.

Before prescribing any regulations, FMCSA must also consider their "costs and benefits" [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed in the RegulatoryAnalyses section of this proposal.

## III. Background

ACC of the American Trucking Associations represents motor carriers that transport motor vehicles ranging from automobiles to Class 8 trucks. ACC states that its members transport more than 96 percent of all trucks moved by the saddle-mount method.

On January 16, 2007, ACC submitted a petition for rulemaking requesting that the requirements for operational brakes on the last saddle-mounted truck (the fourth truck) in a triple saddle-mount combination be eliminated. ACC contends that this requirement actually degrades the braking performance of these combinations because the lightly loaded axle of the last vehicle tends to lock up under heavy braking, potentially increasing stopping distance.

Stopping distances are specified in the vehicle brake performance table at § 393.52(d) of title 49, Code of Federal Regulations, which requires many combination vehicles, including triple saddle-mounts, to be able to stop within 40 feet or less from an initial speed of 20 mph. The FMCSRs do not specify

minimum stopping distances from higher speeds. They do, however, specify performance requirements for the emergency brakes, after the service braking system has failed. Under the § 393.52(d) emergency braking requirements, triple saddle-mounts must be able to stop within 90 feet or less from a speed of 20 mph. Further, § 393.71(a)(3) currently requires operational brakes on any wheel of a saddle-mounted vehicle that is in contact with the highway.

Based on the results of braking tests performed on various triple saddle-mount combinations, as described below, ACC requested that FMCSA make two regulatory changes: (1) Amend § 393.71(a)(3) to eliminate the requirement for operational brakes on the last saddle-mounted truck in a triple saddle-mount combination; and (2) amend § 393.71(c)(4) to require that a triple saddle-mount with any vehicle full-mounted on it have effective brakes acting on those wheels in contact with the roadway.

ACC presented brake performance results from tests conducted by Radlinski & Associates, Inc. [RAI] (now known as Link-Radlinski, Inc.) in 1996 and 2002 in East Liberty, Ohio, on behalf of the National Automobile Transporters Association (NATA), as well as supporting tests RAI conducted for ATC Leasing Company (ATC) in 2003. RAI tested a total of 24 triple saddle-mount combinations in the two tests conducted for NATA and two additional combinations in the ATC test. Braking tests were conducted on various saddle-mount combinations, with overall lengths ranging from 53 to 96.9 feet, total weights ranging from 37,580 to 79,380 pounds, and with and without antilock braking systems (ABS) on the lead unit. Some of the combinations tested exceeded 75 feet in length—the Federal overall length limit then in effect for triple saddle-mount combinations—since the RAI tests were conducted in part to support increases in the overall length limits for saddle-mount combinations. An overview of the tests and corresponding results from RAI is presented below, and a copy of each test report is available in the docket referenced at the beginning of this document.

*1996 Test: "Braking and Offtracking Tests on Longer Saddlemount Driveaway Combinations"* [1]

Stopping distance tests on five triple saddle-mount vehicle combinations were conducted at speeds of 20, 40, and 55 mph. Three runs were made at each speed, and the results were averaged. In the 20 mph stops, the driver was instructed to apply full braking force, but at higher speeds he was told to make a "best effort," or modulated application, to avoid wheel lockup and skidding. Combinations were tested both with all brakes operational and with the brakes on the rearmost axle disconnected.

All five vehicle combinations, both with and without the rearmost axle brakes connected, met the § 393.52(d) requirement that combinations be able to stop within 40 feet or less from 20 mph. Further, in all tests completed at 40 and 55 mph, stopping distance was reduced when the rearmost axle brakes were disabled. An exception was noted in which a vehicle stopped 1 foot shorter with all brakes operational than with rearmost axle brakes disconnected (164 feet versus 165 feet, respectively), but RAI did not consider the difference (less than 1 percent) significant given the variability in the data.

*2002 Test: "Accident Avoidance Performance of More Productive Saddlemount Driveaway Combinations"* [2]

Stopping distance tests on 19 triple saddle-mount vehicle combinations were conducted from a speed of 20 mph, with a reported average of two or three test runs per combination vehicle. In addition, emergency brake tests were performed that require combination vehicles to be able to stop from 20 mph within 90 feet or less. Three types of failures were introduced: front brake circuit failure in the towing vehicle, rear brake circuit failure in the towing vehicle, and a failed towing line (*i.e.,* the brakes on the towed unit were not operational).

All 19 triple saddle-mount combinations were tested with the rearmost axle brakes connected, and 12 were tested with the rearmost axle brakes disabled. In the latter group, all of the units met the § 393.52(d) stopping distance requirement of a maximum of 40 feet from 20 mph. Five units were then tested for stopping distances from both 40 and 55 mph. In all but one case, stopping distance was reduced significantly with the brakes on the rearmost unit disabled. The exception involved a 4 percent increase in stopping distance with the brakes on the last axle disconnected—a difference RAI did not consider significant given the variability in the data.

In the emergency braking tests, 12 combinations were tested in each of two failure scenarios: failed front brakes and failed rear brakes. Two of the units were also tested with a third failure mode of a failed towing control line. All of the vehicles were able to stop within much shorter distances than the 90-foot maximum specified in § 393.52(d).

*2003 Test: "Braking Performance of Saddlemount Driveaway Combinations"* [3]

Stopping distance tests were conducted on one triple saddle-mount combination vehicle from 20, 40, and 55 mph.[4] Three runs were made at each speed, and the results were averaged. In the 20 mph stops, the driver was instructed to apply full braking force, but at the higher speeds he was directed to make a "best effort," or modulated application, to avoid wheel lockup and skidding. The combination was tested with all brakes operational, and also with the brakes on the rearmost axle in the combination disconnected.

The triple saddle-mount combination, both with and without the rearmost unit braked, was able to stop shorter than the 20 mph service brake stopping distance criterion of 40 feet or less in § 393.52(d). Additionally, in all but one test conducted at 40 and 55 mph, stopping distance was reduced when the rearmost axle brakes were disabled.

## IV. Agency Analysis

These test results demonstrate that triple saddle-mount driveaway combinations (1) are able to meet the performance requirements of § 393.52(d) at various combinations of vehicle weight and length with the brakes disconnected on the rearmost towed units (fourth truck), and (2) at higher speeds, perform better when there are no brakes on the rearmost towed unit. Because the rearmost unit (fourth truck) axle weight is less than half the axle weight on the other towed units, connecting the brakes on the rearmost axle increases the likelihood of premature wheel lockup and loss of control due to skidding, and limits the maximum deceleration of the overall combination. Without brakes on the rearmost unit, the driver can apply the brakes harder on the lead unit and the forward towed units, achieving a higher deceleration. Disconnecting the brakes

[1] Radlinski & Associates, Inc., Vehicle Systems Consultants (August 1996). "Braking and Offtracking Tests on Longer Saddlemount Driveaway Combinations." Test conducted for the National Automobile Transporters Association.

[2] Radlinski & Associates, Inc., Vehicle Systems Consultants (January 2002). "Accident Avoidance Performance of More Productive Saddlemount Driveaway Combinations."

[3] Radlinski & Associates, Inc. Vehicle Systems Consultants (May 2003). "Braking Performance of Saddlemount Driveaway Combinations." Test conducted for ATC Leasing Company.

[4] The 2003 test also included a double saddle-mount configuration.

on the rearmost unit also reduces the total volume of air that must be delivered to the towed vehicles, which in turn reduces brake application time and stopping distance.

In addition, ACC's request to amend the braking requirements for triple saddle-mount combinations is based on the same considerations FMCSA cited in a final rule that permits motor carriers to disconnect the service brakes on unladen converter dollies manufactured on or after March 1, 1998.[5] (70 FR 48008, Aug. 15, 2005). The axle weight of an unladen dolly is so low that the wheels lock up under hard braking. To ensure stability and control, which are especially critical during emergency braking, it is better to disconnect the dolly's brakes. Based on testing performed in 1990 at the National Highway Traffic Safety Administration's Vehicle Research and Test Center, FMCSA stated in its final rule:

> Stability and control during braking is an important consideration in determining braking requirements for commercial motor vehicles. While stopping distances for a bobtail tractor towing an unladen converter dolly could be improved in some situations by requiring operable dolly brakes, they could be significantly degraded in others. When consideration is given to the possibility of the converter dolly swinging out as a result of wheel lock up, the FMCSA believes the FMCSRs should be amended to include an exception to the requirement for operable brakes on unladen converter dollies.

The last unit in a saddle-mount combination has higher axle weights than a converter dolly but behaves in much the same way—*i.e.,* the axle in contact with the road locks up under heavy braking, reducing controllability and increasing the stopping distance of the vehicle.

As noted previously, ACC requested FMCSA to address this brake-performance issue by amending both §§ 393.71(a)(3) and 393.71(c)(4). The latter provision requires that if a motor vehicle towed by means of a double saddle-mount has any vehicle full-mounted on it, the saddle-mounted vehicle must at all times while so loaded have effective brakes acting on those wheels that are in contact with the roadway. But § 393.71(c)(4) does not currently apply to *triple* saddle-mount combinations having a full-mounted vehicle. In this situation, the weight on the rearmost axle will be increased, so the brakes on the rearmost unit need to be connected to ensure adequate braking capability—unlike the circumstances described earlier in which the lightly loaded rear axle tends to skid and lose control due to premature wheel lockup.

## V. Discussion of Proposed Rule

Given the potential for increased brake performance efficiencies demonstrated in the test results submitted by ACC, FMCSA agrees that eliminating the requirement for operational brakes on the last (or fourth) saddle-mounted truck or tractor in a triple saddle-mount combination would likely produce safety benefits. We also agree that when one or more vehicles are full-mounted on a triple saddle-mount combination, the FMCSRs should continue to require operative brakes on all wheels in contact with the roadway.

As ACC requested, this proposed rule would amend § 393.71(a)(3) to except the last truck or tractor in a triple saddle-mount configuration from the requirement to have brakes acting on all wheels in contact with the roadway. Further, the proposal would apply to any truck tractor being towed as the last truck in a triple saddle-mount configuration, regardless of whether it is equipped with ABS (as required by § 393.55(c) for truck tractors manufactured on or after March 1, 1997). Although § 393.55(c) excepts truck tractors engaged in driveaway-towaway operations from the requirement to have ABS, the exception is moot for truck tractors built on or after March 1, 1997. In saddle-mount towing configurations, these truck tractors have only an air line connection between each vehicle, so no power is available to operate the antilock sensors and control modules in the towed vehicles. The Agency recommends, therefore, that the rearmost axle brakes in a triple saddle-mount configuration be disconnected even if equipped with ABS.

This proposal also would broaden the applicability of § 393.71(c)(4) to include motor vehicles towed by means of a triple saddle-mount configuration. Under the proposed regulation, if a motor vehicle towed by means of either a double or triple saddle-mount has any vehicle full-mounted on it, the saddle-mounted vehicle would be required at all times to have effective brakes acting on those wheels in contact with the roadway.

In addition, the proposed rule would revise § 393.42 to read, "Any combination of motor vehicles with one or two saddle-mounts." This effectively excepts triple saddle-mount combinations in driveaway-towaway operations from the requirement to have brakes acting on all wheels. These proposed changes are consistent with the Agency's mission of increasing highway safety.

## VI. Regulatory Analyses

*Executive Order 12866 (Regulatory Planning and Review)*

This proposed 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 Agency does not believe implementing this proposed rule would create new costs or cause an adverse economic impact on the industry or the public. Therefore, a full regulatory evaluation is unnecessary.

FMCSA anticipates that this rule could result in several benefits, chief among them the increased safety performance of triple saddle-mount combination CMVs. By improving the braking performance of these CMVs, the proposed rule could reduce the number of crashes in which they are involved. This improved braking ability would also increase the mechanical integrity of these CMVs, providing an ancillary safety benefit.

Tests conducted by Radlinski & Associates, Inc. (now known as Link-Radlinski, Inc.) in 1996, 2002, and 2003, discussed in the Background section of this document, support the argument that disconnecting the rearmost axle brakes of triple saddle-mount combination CMVs improves their braking performance. FMCSA does not have quantifiable data, however, that would allow for an estimation of the number of CMV crashes this change in practice would prevent, and cannot quantify this potential benefit.

This proposed rule would also reduce regulatory burden on motor carriers by eliminating the requirement to connect the rearmost axle brakes on triple saddle-mount CMVs. As with any proposed elimination of an existing regulation, reducing regulatory burden on motor carriers has the potential to lower associated compliance costs. These cost savings are, however, likely to be modest because the proposed rule simply amends a practice that is not particularly laborious or time-consuming.

[5] FMCSA noted that with NHTSA's March 10, 1995, final rule on ABS (60 FR 13216), the long-term need for this exception for unladen converter dollies will diminish. An ABS-equipped converter dolly will not have the stability and control problems observed with unladen converter dollies not equipped with ABS. Therefore, converter dollies manufactured on or after March 1, 1998, the effective date of the NHTSA requirement for ABS on converter dollies, are not covered by the exception.

In addition, FMCSA does not expect that this proposed rule would impose costs upon affected motor carriers, because the elimination of the current requirement would not require motor carriers to purchase new equipment, parts, or accessories or to modify or alter existing equipment or vehicles.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to determine whether proposed rules could have a significant economic impact on a substantial number of small entities. The Agency's economic assessment demonstrates that the proposed rule will yield minor benefits while imposing no new costs. Consequently, I certify that this proposed action would not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $140.8 million (which is the value of $100 million in 2009 after adjusting for inflation) or more in any 1 year.

*Executive Order 12988 (Civil Justice Reform)*

This proposed action 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 analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We determined that this rulemaking does not pose an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Executive Order 13132 (Federalism)*

A rulemaking 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. FMCSA analyzed this proposed action in accordance with Executive Order 13132. The proposal would not have a substantial direct effect on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

*Executive Order 12372 (Intergovernmental Review)*

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

*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. We determined that no new information collection requirements are associated with this proposed rule.

*National Environmental Policy Act*

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (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 proposed action has the potential to produce a very small benefit to the environment if any reduction in crashes is realized. Therefore, this NPRM is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The Categorical Exclusion under paragraph 6(bb) relates to regulations concerning vehicle operation safety standards that would apply to how these vehicles are operated. The Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES.**

We 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 does not affect direct or indirect emissions of criteria pollutants.

*Executive Order 13211 (Energy Effects)*

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

**List of Subjects in 49 CFR Part 393**

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, FMCSA proposes to amend title 49, Code of Federal Regulations, subchapter B, chapter III, as follows:

## PART 393 [AMENDED]

1. The authority citation for part 393 continues to read as follows:

**Authority:** 49 U.S.C. 322, 31136, 31151, and 31502; Sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

2. Amend § 393.42 by revising paragraph (b)(2)(ii) to read as follows:

**§ 393.42 Brakes required on all wheels.**

* * * * *

(b) * * *

(2) * * *

(ii) Any combination of motor vehicles utilizing one or two saddle-mounts.

* * * * *

3. Amend § 393.71 by revising paragraphs (a)(3) and (c)(4) to read as follows:

**§ 393.71 Coupling Devices and towing methods, driveaway-towaway operations.**

(a) * * *

(3) When motor vehicles are towed by means of triple saddle-mounts, all but the final towed vehicle must have brakes acting on all wheels in contact with the roadway.

* * * * *

(c) * * *

(4) If a motor vehicle towed by means of a double or triple saddle-mount has any vehicle full-mounted on it, such saddle-mounted vehicle must at all times while so loaded have effective brakes acting on all wheels in contact with the roadway.

* * * * *

Issued on: February 11, 2011.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. 2011–3911 Filed 2–18–11; 8:45 am]

BILLING CODE 4910–EX–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R4–ES–2010–0092; MO 92210–0–0008–B2]**

## Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Solanum conocarpum (marron bacora) as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the plant *Solanum conocarpum* (marron bacora) as endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing *S. conocarpum* is warranted. Currently, however, listing *S. conocarpum* is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add *S. conocarpum* to our candidate species list. We will develop a proposed rule to list *S. conocarpum* as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim period, the status of the candidate taxon will be addressed through our annual Candidate Notice of Review (CNOR).

**DATES:** The finding announced in this document was made on February 22, 2011.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS–R4–ES–2010–0092]. 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, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquerón, PR 00622. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above internet address or the mailing address listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Ms. Marelisa Rivera, Assistant Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone at (787) 851–7297; or by facsimile at (787) 851–7440. 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)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

*Previous Federal Actions*

On November 21, 1996, we received a petition from the U.S. Virgin Islands (VI) Department of Planning and Natural Resources (DPNR) requesting that we list *Agave eggersiana* and *Solanum conocarpum* as endangered. On November 16, 1998, we published in the **Federal Register** (63 FR 63659) our finding that the petition to list *A. eggersiana* and *S. conocarpum* presented substantial information indicating that the requested action may be warranted and initiated a status review on these two plants.

On September 1, 2004, the Center for Biological Diversity filed a lawsuit against the Department of the Interior and the Service alleging that the Service failed to publish a 12-month finding for *Agave eggersiana* and *Solanum conocarpum* (*Center for Biological Diversity* v. *Norton,* Civil Action No. 1:04–CV–2553 CAP). In a stipulated settlement agreement resolving that case, signed April 27, 2005, we agreed to submit our 12-month finding for *A. eggersiana* and *S. conocarpum* to the **Federal Register** by February 28, 2006. On March 7, 2006, we published our 12-month finding (71 FR 11367) that listing of *A. eggersiana* and *S. conocarpum* was not warranted, because we did not have sufficient information to determine the true status of either *A. eggersiana* or *S. conocarpum* in the wild. Further, we could not determine if either species met the definition of threatened or endangered according to one or more of the five listing factors because we did not have sufficient evidence of which threats, if any, were affecting these species.

On September 9, 2008, the Center for Biological Diversity filed another complaint challenging our 12-month finding (*Center for Biological Diversity* v. *Hamilton,* Case No. 1:08–CV–02830–CAP). In a settlement agreement approved by the Court on August 21, 2009, the Service agreed to submit to the **Federal Register** a new 12-month finding for *Solanum conocarpum* by February 15, 2011. This notice constitutes the 12-month finding on the 1996 petition to list *S. conocarpum* as endangered.

### Species Information

*Taxonomy and Species Description*

*Solanum conocarpum* is a dry-forest shrub of the Solanaceae, or tomato, family that may attain 3 meters (m) (9.8 feet (ft)) in height. Its leaves are oblong-elliptic or oblanceolate (broader at the distal third than the middle), range in size from 3.5 to 7 centimeters (cm) (0.62 to 1.5 inches (in) wide, are coriaceous (leathery texture) and glabrous (no hairs), and have a conspicuous yellowish midvein. The flowers are usually paired in nearly sessile (not stalked) lateral or terminal cymes (flat-topped flower cluster). The corolla consists of five separate petals that are light violet, greenish at the base, and about 2 cm (0.78 in) wide. The fruit, a berry, is ovoid-conical (teardrop shaped), 2 to 3 cm (0.78 to 1.2 in) long, and turns from green with white striations to golden yellow when ripe (Acevedo-Rodríguez 1996, p. 415). Little is known about the natural history, reproductive biology, and effects of herbivory on the species (Ray and Stanford 2003, p. 3).

The petition suggests that *Solanum conocarpum* might be functionally dioecious (requiring male and female flowers from different plants to outcross). However, P. Acevedo-Rodríguez (pers. comm. 2002) documented flowers and fruits in a solitary wild plant he discovered in the White Cliff area (Reef Bay general area). He further suggested that *S. conocarpum* may have less reproductive fitness due to selfing (self-pollination). Later, Ray and Stanford (2005, p. 5)

conducted some pollination studies in a controlled environment that indicate that the species might be an obligate outcrosser (plant has both male and female parts, but it needs to outcross with other individuals to produce fruits due to self-incompatibility) with complete self-incompatibility. This study was conducted because, prior to 2003, a lack of natural recruitment was observed in the wild (Ray and Stanford 2003, p. 3; J. Saliva, Service, pers. obs. 2004; O. Monsegur, Service, pers. obs. 2010; Vilella and Palumbo 2010, pp. 4–7).

DNA sampling of the majority of the populations suggests that most populations have been long isolated (Ray and Stanford 2005, p. 18). Additionally, genetic work performed by Dr. A. Stanford at the University of the Virgin Islands has shown low heterozygosity (A measure of the allele frequency or genetic diversity) (Ray pers. comm. 2010). Further, when compared with its close relative *Solanum polyganum, Solanum conocarpum* appears to show a significant reduction in genetic diversity (Ray pers. comm. 2010).

*Habitat and Distribution*

*Solanum conocarpum* was originally known from a type specimen collected by L.C. Richard at Coral Bay, St. John (U.S. Virgin Islands, or VI), in 1787 (Acevedo-Rodríguez 1996, p. 415). No population estimates are available from Richard's discovery, nor are there any known population estimates prior to 1992. The species was rediscovered in 1992 by P. Acevedo-Rodríguez on the island of St. John (Ray and Stanford 2003, p. 4). The species was presumed to be near extinction, as two mature plants were believed to be the only specimens left in the wild: One on Virgin Islands National Park (VINP) land and one on private land (B. Kojis and R. Boulon pers. comm. 1996; Vilella and Palumbo 2010, p. 1). The habitat descriptions of these two localities are consistent with the localities reported by Acevedo-Rodríguez (1996, p. 415; pers. comm. 2002), who described the habitat as a dry, deciduous forest.

After 1992, six additional populations of *Solanum conocarpum* were identified. Among these newly discovered populations, the species has been reported to occur on dry, poor soils (Ray and Stanford 2005, p. 6). It can be locally abundant in exposed topography on sites disturbed by erosion (depositional zones at the toe of the slopes), areas that have received moderate grazing, and around ridgelines as an understory component in diverse woodland communities (Carper and Ray 2008, p. 1). A habitat suitability model suggests that the vast majority of *S. conocarpum* habitat is found in the lower elevation coastal scrub forest (Vilella and Palumbo 2010, p. 10).

Acevedo-Rodríguez (1996, p. 415) referenced the possibility of the species being present on St. Thomas, and mentioned a collection of a sterile specimen from Virgin Gorda (British Virgin Islands (BVI)). Pedro Acevedo-Rodríguez (pers. comm. 2002) believes that the specimen from Virgin Gorda belongs to a different species, *Cestrum laurifolium.* Omar Monsegur, Service biologist, recently conducted a site visit to the John Folly population and identified several *Cestrum laurifolium* adjacent to individuals of *Solanum conocarpum.* Both plants (*Cestrum laurifolium* and *S. conocarpum*) look very similar, and it is common to confuse the two species (O. Monsegur, pers. comm. 2010). Appropriate surveys should be conducted in St. Thomas and the British Virgin Islands to determine the presence or absence of the species on the islands (O. Monsegur, pers. comm. 2010).

Several efforts have been conducted to propagate *Solanum conocarpum* in the last decade. B. Kojis and R. Boulon (pers. comm. 1996) reported that a local horticulturist, E. Gibney, was able to propagate the species by cuttings (asexually) collected from the two individuals known from the wild and to get them to reproduce sexually by dusting the flowers. Ray and Stanford (2005, p. 6) reported that Gibney successfully reproduced *S. conocarpum* and distributed specimens to various places in the Virgin Islands. P. Acevedo-Rodríguez (pers. comm. 2002) reported planted individuals (cultivars) on the Campus of the University of Virgin Islands in St. Thomas that are sexually reproducing. He also reported a few individuals in the St. George Botanical Garden in St. Croix, on the island of Tortola, at Cannel Bay Hotel on St. John, and in the New York Botanical Garden, the National Botanical Garden in Dominican Republic, and the Puerto Rico Botanical Garden.

*Current Status*

Currently, *Solanum conocarpum* is known from eight localities on St. John Island, VI (*see* Table 1): Two found on the north side of the island (Base Hill and Brown Bay Trail) and six toward the southeast side (Nanny Point, Friis Bay, Reef Bay, John Folly, Sabbat Point, and Europa Ridge). All of the eight known localities of *S. conocarpum* are wild populations each ranging from 1 to 144 individuals. The majority of the individuals are found within the VINP boundaries, leaving only two populations on private lands (Friis Bay and Sabbat Point).

The largest population of *Solanum conocarpum* is located at Nanny Point. As a result of potential urban and tourism development at Nanny Point, most of the natural population has been transferred to the VINP. About 22 percent of the *S. conocarpum* population at Nanny Point was located within a 30-ft access corridor to a private property (Carper, pers. comm. 2005); however, these adult plants were transplanted to an adjacent location on the VINP to avoid potential impacts from development (Carper, pers. comm. 2010). A site visit to the population in May 2010 showed that approximately 90 percent of the transplanted (adult plants) were dead or stressed due to lack of water (Monsegur, Service, unpublished data 2010). Additionally, observation of other *S. conocarpum* deaths appears to result from competition with edge vegetation (vines). The original population size at Nanny Point was estimated at approximately 184 natural plants. As a result of the combined deaths (transplants and competition), it is now estimated that this population has decreased by 25 percent.

The owners of the private properties that harbor the Nanny Point natural population agreed to protect an additional area corresponding to Parcel 30–3 by donating it to the National Park Service (NPS) (Carper and Selengut 2003, p. 1; Ray and Carper 2009, p. 2). Therefore, the entire Nanny Point population, which is the largest known population, now lies within a protected area managed by the VINP. Additionally, one of the Nanny Point landowners has implemented an active propagation program through germination and cloning of adult individuals to enhance the Nanny Point population and other natural populations (Brown Bay Trail and John Folly) (Ray and Carper 2009, p. 3). The aim of this program is to safeguard the genetic diversity of the species and to enhance the existing populations (Ray and Carper 2009, p. 2; Carper 2010, p. 2). The transplanting efforts of seedlings and cuttings (clones) seem to be successful (Monsegur, Service, unpublished data 2010). Ray and Stanford (2005, p. 3) reported a 95-percent seedling survival rate after a reintroduction at Reef Bay. Further planting efforts conducted at Brown Bay Trail, John Folly, and Nanny Point showed a 97-percent survival rate after 2 months (Ray and Carper 2009, p. 5).

Populations located on Base Hill (one individual), Brown Bay Trail (one

individual), Europa Ridge (one individual) and Reef Bay (six individuals) lie within NPS lands. Recent evidence suggests that the Reef Bay population was apparently extirpated, but there are no further details about the causes for the extirpation (G. Ray, pers. comm. 2010). The Brown Bay individual is located on the edge of the Brown Bay Trail, and shows evidence of damage due to trail maintenance. A new population was recently recorded just along the boundaries of the NPS (John Folly Bay) (M. Carper, pers. comm. 2010). This population is composed of approximately 11 adult individuals and shows signs of human disturbance within the area (Monsegur, Service, unpublished data 2010). It is highly probable that they were pruned in the past, as there is a small trail that goes across the population. Also the area was used as a junkyard in the past, and there is debris on the area indicating former use as a housing area (Monsegur, Service, unpublished data 2010). The John Folly Bay population is adjacent to Road 107, making the population vulnerable to habitat degradation (deforestation and soil erosion) due to road maintenance and potential future road expansion. The second largest population, Friis Bay (33 individuals), is found on privately owned property (Ray and Stanford 2005, p. 16). Another private property site composed of a single individual is located on Sabbat Point, an area adjacent to Friis Bay.

Ray and Stanford (2003, p. 4) developed an implementation plan to conduct shade-house propagation, which used both seedlings and cuttings, to reintroduce *Solanum conocarpum* seedlings within the VINP on St. John. The plants responded well in shade-house conditions, where seed germination and survivorship have been very successful, almost 100 percent and 95 percent, respectively. On the other hand, the survival rate for the cutting technique (cutting a piece of a plant and inducing root growth) is less than 10 percent under nursery conditions (Ray and Carper 2009, p. 6). As observed during a site visit by a Service biologist, the transplanting of seedlings and cuttings to the wild seems to be successful (Monsegur, Service, unpublished data 2010). Approximately 240 seedlings and propagules have been planted around several of the wild individuals to enhance and augment the natural populations of *S. conocarpum* (providing new genetic inflow to several of the wild populations, especially to the populations consisting of only one individual).

TABLE 1—CURRENTLY KNOWN POPULATIONS OF SOLANUM CONOCARPUM (MARRON BACORA) ON ST. JOHN

| Locality | Estimated number of individuals in natural population | Estimated number of introduced individuals reported | Ownership | Source of information |
|---|---|---|---|---|
| Nanny Point | 144** | 50 | Public–NPS | Ray and Stanford 2005, p. 16; Ray and Carper 2009, pp. 3 and 5; Vilella and Palumbo 2010, p. 1; Monsegur, Service, pers. obs. 2010. |
| Friis Bay | 33 | | Private | Ray and Stanford 2005, p. 16. |
| John Folly | 11 | 37 | Public–NPS (Boundary) | Ray and Carper 2009, pp. 3 and 5; Monsegur, Service, pers. obs. 2010; Vilella and Palumbo 2010, p. 6. |
| Reef Bay | 6* | 60 | Public–NPS | Ray and Stanford 2005, p. 16; Monsegur, Service, pers. obs. 2010. |
| Brown Bay Trail | 1 | 36 | Public–NPS | Ray and Stanford 2005, p. 16; Ray & Carper 2009, pp. 3 and 5; Monsegur, Service, pers. obs. 2010. |
| Europa Ridge | 1 | 60 | Public–NPS | Ray and Stanford 2005, p. 16; Monsegur, Service, pers. obs. 2010. |
| Sabbat Point | 1 | | Private | Ray and Stanford 2005, p. 16. |
| Base Hill | 1 | | Public–NPS | Ray and Stanford 2005, p. 16. |
| | 198 | 243 | | |

* Indicates that, based on Ray (pers. comm. 2010), this population is probably extirpated.
** This number does not include the 40 adult plants that died as a result of translocation.

**Summary of Information Pertaining to the Five Factors**

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations (50 CFR 424), set forth procedures for adding species to 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 *Solanum conocarpum,* in relation to the five factors provided in section 4(a)(1) of the Act, is discussed below.

In considering what factors might constitute threats to a species; we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and we would therefore attempt to determine how

significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act.

*Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Of the currently known *Solanum conocarpum* populations, only two populations (Friis Bay and Sabbat Point) remain on private lands; however, currently unsurveyed habitat suitable for *S. conocarpum,* exists on additional private lands. All other known populations are located on VINP lands. The populations that occur on private lands as well as the ones bordering the VINP are subject to intense pressure from urban development (Vilella and Palumbo 2010, p. 1). At present time, the upper slopes and the drainage areas that surround the largest population (Nanny Point) are privately owned. These private lands are planned for housing development and have been divided for smaller housing lots that are currently advertised for sale (Carper and Selengut 2003, p. 1; Ray and Carper 2009, p. 2). The same pattern (private lands divided for housing lots) is observed at the Johns Folly drainage (Monsegur, pers. obs. 2010), where small housing developments may jeopardize undetected populations. In addition, habitat suitability models conducted by Vilella and Palumbo (2010, p. 7) indicate that a good portion of the high-quality (39 percent) and moderate quality (38 percent) habitat for *S. conocarpum* is located within private lands subject to urban development. The relative abundance of the species at some sites (Nanny Point and Friis Bay) may indicate that the species was once more common and that it was an important component of the vegetation of the dry forest of St. John. Even though the majority of the known populations lie within federally protected areas, the likely destruction or modification of the high-quality habitat within St. John may imply the extirpation of undetected populations and the irreversible damage to areas with suitable habitat for the reintroduction of the species.

Based on the above information, we consider the present or threatened destruction, modification, or curtailment of the species' habitat or range as a low-to-moderate, not imminent threat to populations of *Solanum conocarpum.* Despite the majority of known *S. conocarpum* individuals occurring within protected areas, a large part of the suitable habitat for the species is under pressure from future development, which could result in the extirpation of unknown populations.

*Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The current available information on the species does not suggest that over-utilization for commercial, recreational, scientific, or educational purposes has contributed to a decline of *Solanum conocarpum.* In recent years, *S. conocarpum* has been propagated from seeds and cuttings obtained from wild populations; however, collection for these purposes is not thought to affect survivability of individuals or negatively affect the status of the species. In fact, this practice has significantly enhanced the existing populations, and continues to safeguard the genetic diversity of the species (Ray and Stanford 2005, p. 3; Ray and Carper 2009, p. 2). This is the only known use of the species, and it is strictly for scientific purposes. Therefore, we do not have any evidence that suggests overutilization as a threat to *S. conocarpum.*

*Factor C: Disease or Predation*

It has been hypothesized that hermit crabs act as predators of the fruits and seeds of *Solanum conocarpum* (Ray 2005, p. 2). Hermit crabs have been observed feeding on the fruit where shrub densities are high (Ray and Carper, 2008, p. 1; Ray, 2005, p. 2). Fruit and seed production in the Nanny Point and John Folly populations has been reported as ample and copious (Ray 2005, p. 6; Carper, pers. comm. 2010). While hermit crabs may consume fallen fruit in large quantities (Ray 2005, p. 2), it is not known at this time if fruit consumption prevents seed germination (*e.g.,* potentially crushing seed embryos as the crabs feed), or if this consumption is in any way responsible for the lack of seedling recruitment in the wild. Another observation of *S. conocarpum* predation was reported by Vilella and Palumbo (2010, p. 14) and was presumed to be by insects feeding on the leaves. This observation concurs with the reports by Ray and Stanford (2005, p. 15) indicating bite marks of an herbivore insect on *S. conocarpum* leaves. Nevertheless, there is no clear evidence indicating that seed or plant predation is adversely affecting the status of the species. Based on the above, we do not consider disease or predation as a current threat to the species.

*Factor D: The Inadequacy of Existing Regulatory Mechanisms*

The Territory of the U.S. Virgin Islands currently considers *Solanum conocarpum* to be endangered under the Virgin Islands Indigenous and Endangered Species Act (V.I. Code, Title 12, Chapter 2), and has amended an existing regulation (Bill No. 18–0403) to provide for protection of endangered and threatened wildlife and plants by prohibiting the take, injury, or possession of indigenous plants. However, Rothenberger *et al.* (2008, p. 68) mentioned that the lack of management and enforcement capacity continues to be a significant challenge for the U.S. Virgin Islands, since enforcement agencies are chronically understaffed and territorial resource management offices experience significant staff turnover. Despite this, however, we do not consider the inadequacy of Territorial regulatory mechanisms to be a threat, because at this time we have not identified any adverse effect to the populations or the species related to collection or take of *S. conocarpum.*

The National Park Service, under its Organic Act, is responsible for managing the national parks to conserve the scenery and the natural and historic objects and the wildlife. 16 U.S.C. 1. The National Parks Omnibus Management Act of 1998 requires the NPS to inventory and monitor its natural resources. 16 U.S.C. 5934. NPS has implemented its resource management responsibilities through its Management Policies, Section 4.4, which states that "it will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems."

Section 207 of the Omnibus Management Act of 1998 allows NPS to withhold from the public information related to the nature and specific location of endangered, threatened, or rare species unless disclosure would not create an unreasonable risk of harm to the species. 16 U.S.C. 5937.

Pursuant to many of these authorities, VINP does not allow cutting of vegetation and all natural resource activities must be permitted by the park (Boulon, pers. comm. 2010).

In short, we do not consider the inadequacy of Federal regulatory mechanisms to be a threat to the populations of *S. conocarpum* located in VINP. The regulatory mechanisms discussed above allow NPS to prevent collection or take of *S. conocarpum* on NPS property. Furthermore, we do not consider development outside VINP to

be a threat to *S. conocarpum* populations inside VINP.

*Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species*

Human-Induced Fires

In the Caribbean, native plant species, particularly endemics with limited distribution, may be vulnerable to natural or manmade events such as hurricanes and human-induced fires. Fire is not a natural component of subtropical dry forest in Puerto Rico and the Virgin Islands; thus, most species found in this type of forest are not fire adapted (Monsegur 2009, p. 26). *Solanum conocarpum* is associated with lower elevation dry forests. This habitat may be susceptible to forest fires, particularly on private lands, where fire could be accidentally ignited. Furthermore, regenerating forests, such as the ones prevalent in St. John, are prone to wildfires that promote a decrease in the stature of the vegetation and allow for the development of persistent shrubland dominated by introduced tree species and grasses (Wiley and Vilella 1998, p. 340). Studies conducted within the Guánica Forest in southern Puerto Rico indicate that some exotic tree species can remain as a dominant canopy species for at least 80 years (Wolfe 2009, p. 2). Given the growth habit of *S. conocarpum,* it is unlikely that mature individuals would survive a fire even of moderate intensity (Vilella and Palumbo 2010, p. 15), and, therefore, the species might be outcompeted by exotics. However, a site visit to St. John to evaluate the threats to the species, found no substantial evidence that fires posed as an imminent threat to the species (Monsegur, pers. obs. 2010). The only site that is vulnerable to fires is the John Folly site, due to its proximity to a road and the accumulation of debris associated with a former house (Monsegur, pers. obs. 2010). In addition, the VINP has a fire prevention plan that includes the protection of native species, including *S. conocarpum.* Therefore, we conclude that this species is not currently threatened by human-induced fires.

Hurricanes and Climate Change

Hurricanes frequently affect the islands of the Caribbean. Successional responses to hurricanes can influence the structure and composition of plant communities in the Caribbean islands (Van Bloem *et al.* 2005, p. 576). Within natural conditions, it is likely that *Solanum conocarpum* is well adapted to these tropical storms. However, the cumulative effect of severe tropical storms and increased sediment runoff may jeopardize the establishment of seedlings along drainage areas usually associated with suitable habitat for *S. conocarpum* (Ray 2005, p. 2; Monsegur, pers. obs. 2010). Due to the low number of adult individuals and the problems regarding the natural recruitment of the species, severe tropical storms may have an adverse impact on the species. However, based on the available information, we consider hurricanes as a low and not imminent threat to the species.

*Solanum conocarpum* may be further threatened by climate change, which is predicted to increase the frequency and strength of tropical storms and can cause severe droughts (Hopkinson *et al.* 2008, p. 260). The cumulative effect of coastal erosion due to severe hurricanes plus the habitat modification for urban and tourist development can further diminish the availability of suitable habitat and, therefore, limit population expansion and colonization of new areas. In addition, the possibility of severe droughts may contribute to an increase in the quantity and frequency of fires on the island. These cumulative factors may reduce the number of individuals and further reduce populations. As a result, we consider the threat of climate change to be moderate and imminent. We do not anticipate any changes that would appreciably reduce this threat in the foreseeable future.

Lack of Natural Recruitment

Lack of natural recruitment represents one of the major threats to the *Solanum conocarpum.* Based on the structure of the populations of Nanny Point and John Folly, these populations are predominantly composed of old individuals. This is also true for the Brown Bay Trail individual. Seedling and sapling stages are missing in these populations, and old individuals are dying due to competition with other species such as vines. Without natural recruitment or successful augmentation from captive propagated individuals, these populations are likely to become extirpated as older *S. conocarpum* individuals die. Despite the efforts to enhance the natural populations by planting seedlings and saplings, it is unknown if the planted individuals will develop as mature plants capable of reproduction. Flowering or fruit production of individuals planted in the wild has not been reported to date. Additionally, the structure of the existing wild population indicates that they are mostly composed of old individuals (Monsegur, pers. obs. 2010). Hermit crab consumption of fruit is currently the only factor suspected in the lack of natural recruitment; however, as both species coevolved in the same habitat, this consumption is unlikely to explain the complete lack of recruitment. Plant sterility is also not a viable theory for the lack of recruitment, as germination under greenhouse conditions is highly successful, with almost 100-percent germination (Ray and Stanford, 2005, p. 6). Although the cause of *Solanum conocarpum's* unsuccessful recruitment is unknown, it is not the only species within the Solanaceae family facing this threat. Matabuey (*Goetzea elegans*) is an example of another species endemic to the Caribbean that shows a conspicuous flowering with showy fruits, but faces problems with its dispersion and recruitment. Similar to *Solanum conocarpum,* matabuey shows an outstanding germination under greenhouse conditions. Based on the above, we consider lack of natural recruitment as a high and imminent threat to the species.

Reproductive Biology

The nature of the relationships between *Solanum conocarpum* and the different pollinators and seed dispersers that have interacted with this species over its evolutionary history is important to consider. Controlled pollination studies concluded that this species is an obligate outcrosser (reproduction requires pollen from another plant) with complete self-incompatibility (Ray and Stanford 2005, p. 5). As plant populations become reduced and spatially segregated, important life-history needs provided by pollinators and seed dispersers may be compromised (Kearns and Inouye 1997, p. 299). It is possible that the natural fruit dispersers of *S. conocarpum* focused on other food sources as the populations of this shrub became increasingly patchy, due to changes in the structure and composition of the vegetation because of deforestation and introduction of exotic plant species. The absence of a fruit disperser may indicate that the disperser of a species is extinct or that the populations are too small to attract the disperser (Roman, 2006, p. 50). The loss of potential breeding partners, reduction or loss of pollinators, and the loss of seed dispersers are examples of negative impacts due to habitat fragmentation (Kearns and Inouye 1997, p. 299; Murren 2002, p. 101). As an obligate outcrosser, *S. conocarpum* encounters another challenge, in that isolated and relic individuals may no longer reproduce unless enhancement and

artificial propagation projects are conducted. We consider the absence of natural dispersion to be a high and imminent threat.

Genetic Variation

Along with a decreasing population size, negative impacts of habitat fragmentation may result in erosion of genetic variation through the loss of alleles by random genetic drift (Honnay and Jacquemyn, 2007, p. 824). Habitat fragmentation may also limit the ability of a species to respond to a changing environment (Booy *et al.* 2000, p. 385). Research conducted on *Solanum conocarpum* shows a reduction in its genetic diversity (Ray and Stanford 2005, p. 18). The population with the greatest genetic diversity is the one located at Nanny Point, which also has the largest number of individuals. In addition to attempts to safeguard the genetic diversity of the species, the survival of reintroduced individuals needs to be monitored, as well as their development into mature individuals capable of contributing to the natural recruitment of the species. Consequently, the protection and monitoring of known adult individuals should be considered as a high priority for the conservation of the species. Based on the above, we consider the lack of genetic variation as a moderate but imminent threat to the species.

Nonnative Species

Exotic mammal browsers are found throughout the range of *Solanum conocarpum* on St. John Island. These include feral goats (*Capra aegagrus hircus*), pigs (*Sus scrofa*), Key deer (*Odocoileus virginianus clavium*), and donkeys (*Equus asinus*) (Vilella and Palumbo 2010, p. 5; Monsegur, pers. obs. 2010). Feral donkeys, pigs, deer, and goats could directly and indirectly affect *S. conocarpum* populations by uprooting and eating seedlings, destabilizing slopes, and dispersing exotic plant species, thus preventing or reducing sustainability of populations of *S. conocarpum.* However, the extent of such threats to the species is "speculative" (NPS 2003, p. 37) and "imprecise" (NPS 2004, p. 43). There is no available information on the role these exotic species may play as a limiting factor to *S. conocarpum* population dynamics in general, and to recruitment in particular (Schemske *et al.* 1994, p. 592). VINP is implementing plans to control the populations of nonnative feral hogs, goats, and sheep within VINP (NPS 2003, 2004). Feral hog populations in VINP are low, and reduction efforts have been targeted to problem areas such as Reef Bay Valley (NPS 2008, p. 2).

However, hogs continue to be a problem at the Reef Bay area as they uproot the vegetation searching for food and water (Monsegur, Service, unpublished data 2010). The Service conducted a field assessment that confirmed the presence of exotic mammal species within *Solanum conocarpum* habitat, and which highlighted the abundance of the Key deer and herds of feral goats (Monsegur, Service, unpublished data 2010). The observations by Monsegur (2010) coincide with reports of a high abundance of key deer within the range of *S. conocarpum* by Ray and Stanford (2005, p. 19), and also with reports from the NPS that describe deer populations as increasing (NPS 2008, p. 4). Despite the reports of the intrusion of free-roaming ungulates within *S. conocarpum* natural populations (Ray and Stanford, 2005, p. 5), there is a lack of information regarding the specific adverse effects of these exotic animals on the species. It is expected that, due to their abundance, exotic mammal species are modifying the structure of the vegetation and, therefore, the environmental conditions on these areas. This may imply changes to microhabitat conditions that are necessary for seed germination and seedling recruitment of *S. conocarpum.* Apparently, the distribution of the species seems to be more correlated with abiotic or environmental factors, than with composition or structure of the vegetation, as *S. conocarpum* shows little fidelity to any particular suite of community associates (Ray and Stanford 2005, p. 5).

At this time, there is no clear evidence that donkeys, deer, pigs, or goats constitute a specific threat to *Solanum conocarpum* by feeding on young or adult, wild or reintroduced individuals, and fruits of the species. However, the impacts of introduced herbivores on the species include modifying the structure of the vegetation and the environmental conditions in which *S. conocarpum* evolved and that are required for their natural recruitment. Based on the above, we consider the effects of ungulates as a moderate but imminent threat to the species.

In summary, we consider that *Solanum conocarpum* is threatened by the lack of natural recruitment, absence of dispersers, fragmented distribution, lack of genetic variation, climate change, and habitat destruction or modification by exotic mammal species. These threats are evidenced by the reduced number of individuals, low number of populations, and lack of connectivity between populations, any or all of which may result in an increased risk of genetic drift. Thus, we consider threats under this factor to be high in magnitude and imminent.

**Finding**

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether *Solanum conocarpum* is threatened or endangered throughout all or a significant portion of its range. We 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; consulted with species and habitat experts and other Federal and State agencies; and conducted field surveys on the island of St. John.

This status review identified threats to the species attributable to Factors A and E. Of the currently known eight populations, two are located on private lands, and six are located in the Virgin Islands National Park System. Habitat modification may result in irreversible damage to the species' natural habitat, decreasing the number of individuals in already small populations. In addition, the current sale of private housing lots adjacent to currently known populations may suggest future urban developments that could lead to the extirpation of unknown populations (see Factor A).

*Solanum conocarpum* is also threatened by the lack of natural recruitment, absence of dispersers, fragmented distribution, lack of genetic variation, and habitat destruction or modification by exotic mammal species. These threats are evidenced by the predominance of old individuals in the populations, reduced number of individuals, low number of populations, and lack of connectivity between populations, any or all of which may result in an increased risk of genetic drift. Furthermore, four of the currently known localities consist of a single individual, which may not be sustainable, as the species has been identified as an obligate outcrosser. One natural population has been reported as extirpated, the largest population has suffered a reduction of approximately 25 percent of the natural individuals, and low genetic variability has been reported for the species. In addition, the abundance of feral animals may modify the structure of vegetation and may change the conditions necessary for

seed germination or seedling recruitment (see Factor E).

The Service does not have any substantial evidence to suggest that overutilization (Factor B), predation or disease (Factor C) or inadequacy of regulatory mechanisms (Factor D) is a threat for *Solanum conocarpum* at this time.

On the basis of the best scientific and commercial information available, we find that listing *Solanum conocarpum* is warranted. We will make a determination on the status of the species as threatened or endangered when we develop a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and the need to make progress on adding or removing already qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing this species is not warranted at this time, since approximately 198 individuals in natural populations are known to occur in 8 localities where the majority of the individuals (86 percent) are located within protected areas (Table 1). However, if at any time we determine that issuing an emergency regulation temporarily listing the species is warranted, we will initiate this action at that time.

**Listing Priority Number**

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. The system places greatest importance on the immediacy and magnitude of threats, but also factors in the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera, full species, and subspecies (or equivalently, distinct population segments of vertebrates).

Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus), species, or part of a species (subspecies, distinct population segment, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Under the Service's guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their existence. These species receive the highest listing priority. We consider the threats to *Solanum conocarpum* to be high in magnitude because many of the threats that we analyzed are present throughout the range and are likely to result in adverse impact to the status of the species.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that species facing actual, identifiable threats are given priority over those for which threats are will likely occur in the future, or species that are intrinsically vulnerable but are not known to be presently facing threats. Not all threats to *Solanum conocarpum* are imminent, but we do have evidence of some currently ongoing threats. Studies show that *S. conocarpum* is limited by its lack of recruitment and low reproductive capacity, both of which are likely due to habitat fragmentation.

Threats under Factor A are low-to-moderate, but not imminent because of protections provided through conservation agreements within private lands and management of the populations on VINP lands. The majority of the threats to Factor E are high in magnitude and imminent because they are currently occurring throughout the range of the species and result in the lack of successful recruitment. Threats under Factor E have occurred in the past and are clearly a threat today and in the near future. These impacts directly affect the species ability to produce new plants and the older plants are dying due to competition with other vegetation. Additionally, the pollinators and seed dispersers are unknown and may be focused on other food sources as the species population became fragmented. The U.S. Virgin Island and the IUCN have already classified this species as endangered according to their criteria.

The third criterion in our LPN guidelines is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. We determined that *Solanum conocarpum* is a full species, and as noted above, it faces threats of a high magnitude and nonimmediacy.

As a result of our analysis of the best available scientific and commercial information, we assigned *Solanum conocarpum* a Listing Priority Number 2, based on the high magnitude and imminent threats described under Factor E. At least two of the threats discussed above are occurring now, and we anticipate they will still occur in the near future in St. John. These threats are ongoing and in some cases are considered irreversible. While we conclude that listing the species is warranted, an immediate proposal to list this species is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year 2011. This work includes all the actions listed in the tables below under expeditious progress.

We will continue to monitor the threats to *Solanum conocarpum,* and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

**Preclusion and Expeditious Progress**

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of

the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, the median cost is $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we do not know if we will be able to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on December 22, 2010, Congress passed a continuing resolution which provides funding at the FY 2010 enacted level through March 4, 2011. Until Congress appropriates funds for FY 2011 at a different level, we will fund listing work based on the FY 2010 amount. Thus, at this time in FY 2011, the Service anticipates an appropriation of $22,103,000 based on FY 2010 appropriations. Of that, the Service must dedicate $11,632,000 for determinations of critical habitat for already listed species. Also $500,000 is appropriated for foreign species listings under the Act. The Service thus has $9,971,000 available to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010 the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, it is unlikely that the Service will be able to initiate any new listing determination for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using $1,500,000 for work on listing actions for foreign species which reduces funding available for domestic listing actions, however, currently only $500,000 has been allocated. Although there are currently no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

For the above reasons, funding a proposed listing determination for *Solanum conocarpum* is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority (i.e., candidate species with LPNs of 1).

As discussed under Listing Priority Number above, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our "precluded" finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed one delisting rule.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

| Publication date | Title | Actions | FR Pages |
|---|---|---|---|
| 10/6/2010 | Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat. | Proposed Listing Endangered. | 75 FR 61664–61690 |
| 10/7/2010 | 12-month Finding on a Petition To List the Sacramento Splittail as Endangered or Threatened. | Notice of 12-month petition finding, Not warranted. | 75 FR 62070–62095 |
| 10/28/2010 | Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow. | Proposed Listing Endangered (uplisting). | 75 FR 66481–66552 |
| 11/2/2010 | 90-Day Finding on a Petition To List the Bay Springs Salamander as Endangered. | Notice of 90-day Petition Finding, Not substantial. | 75 FR 67341–67343 |
| 11/2/2010 | Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat. | Final Listing Endangered. | 75 FR 67511–67550 |
| 11/2/2010 | Listing the Rayed Bean and Snuffbox as Endangered | Proposed Listing Endangered. | 75 FR 67551–67583 |
| 11/4/2010 | 12-Month Finding on a Petition To List *Cirsium wrightii* (Wright's Marsh Thistle) as Endangered or Threatened. | Notice of 12-month petition finding, Warranted but precluded. | 75 FR 67925–67944 |
| 12/14/2010 | Endangered Status for Dunes Sagebrush Lizard | Proposed Listing Endangered. | 75 FR 77801–77817 |
| 12/14/2010 | 12-month Finding on a Petition To List the North American Wolverine as Endangered or Threatened. | Notice of 12-month petition finding, Warranted but precluded. | 75 FR 78029–78061 |
| 12/14/2010 | 12-Month Finding on a Petition To List the Sonoran Population of the Desert Tortoise as Endangered or Threatened. | Notice of 12-month petition finding, Warranted but precluded. | 75 FR 78093–78146 |

FY 2011 COMPLETED LISTING ACTIONS—Continued

| Publication date | Title | Actions | FR Pages |
|---|---|---|---|
| 12/15/2010 | 12-Month Finding on a Petition To List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened. | Notice of 12-month petition finding, Warranted but precluded. | 75 FR 78513–78556 |
| 12/28/2010 | Listing Seven Brazilian Bird Species as Endangered Throughout Their Range. | Final Listing Endangered. | 75 FR 81793–81815 |
| 1/4/2011 | 90-Day Finding on a Petition To List the Red Knot subspecies *Calidris canutus roselaari* as Endangered. | Notice of 90-day Petition Finding, Not substantial. | 76 FR 304–311 |
| 1/19/2011 | Endangered Status for the Sheepnose and Spectaclecase Mussels | Proposed Listing Endangered. | 76 FR 3392–3420 |
| 2/10/2011 | 12-Month Finding on a Petition To List the Pacific Walrus as Endangered or Threatened. | Notice of 12-month petition finding, Warranted but precluded. | 76 FR 7634–7679 |

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

| Species | Action |
|---|---|
| **Actions Subject to Court Order/Settlement Agreement** | |
| Flat-tailed horned lizard | Final listing determination. |
| Mountain plover [4] | Final listing determination. |
| Thorne's Hairstreak butterfly [3] | 12-month petition finding. |
| Hermes copper butterfly [3] | 12-month petition finding. |
| 4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) [5] | 12-month petition finding. |
| 4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw)[5]. | 12-month petition finding. |
| 4 parrot species (crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo)[5]. | 12-month petition finding. |
| Utah prairie dog (uplisting) | 90-day petition finding. |
| **Actions with Statutory Deadlines** | |
| Casey's june beetle | Final listing determination. |
| Southern rockhopper penguin—Campbell Plateau population | Final listing determination. |
| 6 Birds from Eurasia | Final listing determination. |
| 5 Bird species from Colombia and Ecuador | Final listing determination. |
| Queen Charlotte goshawk | Final listing determination. |
| 5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace)[4]. | Final listing determination. |
| Ozark hellbender [4] | Final listing determination. |
| Altamaha spinymussel [3] | Final listing determination. |
| 3 Colorado plants (*Ipomopsis polyantha* (Pagosa Skyrocket), *Penstemon debilis* (Parachute Beardtongue), and *Phacelia submutica* (DeBeque Phacelia))[4]. | Final listing determination. |
| Salmon crested cockatoo | Final listing determination. |
| 6 Birds from Peru and Bolivia | Final listing determination. |
| Loggerhead sea turtle (assist National Marine Fisheries Service) [5] | Final listing determination. |
| 2 mussels (rayed bean (LPN = 2), snuffbox No LPN) [5] | Final listing determination. |
| CA golden trout [4] | 12-month petition finding. |
| Black-footed albatross | 12-month petition finding. |
| Mount Charleston blue butterfly | 12-month petition finding. |
| Mojave fringe-toed lizard [1] | 12-month petition finding. |
| Kokanee—Lake Sammamish population [1] | 12-month petition finding. |
| Cactus ferruginous pygmy-owl [1] | 12-month petition finding. |
| Northern leopard frog | 12-month petition finding. |
| Tehachapi slender salamander | 12-month petition finding. |
| Coqui Llanero | 12-month petition finding/Proposed listing. |

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

| Species | Action |
|---|---|
| Dusky tree vole | 12-month petition finding. |
| 3 MT invertebrates (mist forestfly (*Lednia tumana*), *Oreohelix* sp. 3, *Oreohelix* sp. 31) from 206 species petition. | 12-month petition finding. |
| 5 UT plants (*Astragalus hamiltonii, Eriogonum soredium, Lepidium ostleri, Penstemon flowersii, Trifolium friscanum*) from 206 species petition. | 12-month petition finding. |
| 5 WY plants (*Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechere* (*Arabis*) *pusilla, Penstemon gibbensii*) from 206 species petition. | 12-month petition finding. |
| Leatherside chub (from 206 species petition) | 12-month petition finding. |
| Frigid ambersnail (from 206 species petition) [3] | 12-month petition finding. |
| Platte River caddisfly (from 206 species petition) [5] | 12-month petition finding. |
| Gopher tortoise—eastern population | 12-month petition finding. |
| Grand Canyon scorpion (from 475 species petition) | 12-month petition finding. |
| *Anacroneuria wipukupa* (a stonefly from 475 species petition) [4] | 12-month petition finding. |
| Rattlesnake-master borer moth (from 475 species petition) [3] | 12-month petition finding. |
| 3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition). | 12-month petition finding. |
| 2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition) | 12-month petition finding. |
| 3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition). | 12-month petition finding. |
| 5 Central Texas mussel species (3 from 475 species petition) | 12-month petition finding. |
| 14 parrots (foreign species) | 12-month petition finding. |
| Berry Cave salamander [1] | 12-month petition finding. |
| Striped Newt [1] | 12-month petition finding. |
| Fisher—Northern Rocky Mountain Range [1] | 12-month petition finding. |
| Mohave Ground Squirrel [1] | 12-month petition finding. |
| Puerto Rico Harlequin Butterfly [3] | 12-month petition finding. |
| Western gull-billed tern | 12-month petition finding. |
| Ozark chinquapin (*Castanea pumila* var. *ozarkensis*) [4] | 12-month petition finding. |
| HI yellow-faced bees | 12-month petition finding. |
| Giant Palouse earthworm | 12-month petition finding. |
| Whitebark pine | 12-month petition finding. |
| OK grass pink (*Calopogon oklahomensis*) [1] | 12-month petition finding. |
| Ashy storm-petrel [5] | 12-month petition finding. |
| Honduran emerald | 12-month petition finding. |
| Southeastern pop. snowy plover and wintering pop. of piping plover [1] | 90-day petition finding. |
| Eagle Lake trout [1] | 90-day petition finding. |
| Smooth-billed ani [1] | 90-day petition finding. |
| 32 Pacific Northwest mollusks species (snails and slugs) [1] | 90-day petition finding. |
| 42 snail species (Nevada and Utah) | 90-day petition finding. |
| Peary caribou | 90-day petition finding. |
| Plains bison | 90-day petition finding. |
| Spring Mountains checkerspot butterfly | 90-day petition finding. |
| Spring pygmy sunfish | 90-day petition finding. |
| Bay skipper | 90-day petition finding. |
| Unsilvered fritillary | 90-day petition finding. |
| Texas kangaroo rat | 90-day petition finding. |
| Spot-tailed earless lizard | 90-day petition finding. |
| Eastern small-footed bat | 90-day petition finding. |
| Northern long-eared bat | 90-day petition finding. |
| Prairie chub | 90-day petition finding. |
| 10 species of Great Basin butterfly | 90-day petition finding. |
| 6 sand dune (scarab) beetles | 90-day petition finding. |
| Golden-winged warbler [4] | 90-day petition finding. |
| Sand-verbena moth | 90-day petition finding. |
| 404 Southeast species | 90-day petition finding. |
| Franklin's bumble bee [4] | 90-day petition finding. |
| 2 Idaho snowflies (straight snowfly and Idaho snowfly) [4] | 90-day petition finding. |
| American eel [4] | 90-day petition finding. |
| Gila monster (Utah population) [4] | 90-day petition finding. |
| Arapahoe snowfly [4] | 90-day petition finding. |
| Leona's little blue [4] | 90-day petition finding. |
| Aztec gilia [5] | 90-day petition finding. |
| White-tailed ptarmigan [5] | 90-day petition finding. |
| San Bernardino flying squirrel [5] | 90-day petition finding. |
| Bicknell's thrush [5] | 90-day petition finding. |
| Chimpanzee | 90-day petition finding. |
| Sonoran talussnail [5] | 90-day petition finding. |
| 2 AZ Sky Island plants (*Graptopetalum bartrami* and *Pectis imberbis*) [5] | 90-day petition finding. |
| I'iwi [5] | 90-day petition finding. |

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

| Species | Action |
|---|---|
| **High-Priority Listing Actions** | |
| 19 Oahu candidate species [2] (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN = 9). | Proposed listing. |
| 19 Maui-Nui candidate species [2] (16 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8). | Proposed listing. |
| 2 Arizona springsnails [2] (*Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2)) | Proposed listing. |
| Chupadera springsnail [2] (*Pyrgulopsis chupaderae* (LPN = 2) | Proposed listing. |
| 8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)) [4]. | Proposed listing. |
| Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) [4] | Proposed listing. |
| Grotto sculpin (LPN = 2) [4] | Proposed listing. |
| 2 Arkansas mussels (Neosho mucket (LPN = 2) and Rabbitsfoot (LPN = 9)) [4] | Proposed listing. |
| Diamond darter (LPN = 2) [4] | Proposed listing. |
| Gunnison sage-grouse (LPN = 2) [4] | Proposed listing. |
| Miami blue (LPN = 3) [3] | Proposed listing. |
| 4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) [3]. | Proposed listing. |
| 5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2))[3]. | Proposed listing. |
| 2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rose-mallow (*Hibiscus dasycalyx*) (LPN = 2))[3]. | Proposed listing. |
| FL bonneted bat (LPN = 2) [3] | Proposed listing. |
| 21 Big Island (HI) species [5] (includes 8 candidate species—5 plants and 3 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8). | Proposed listing. |
| 12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8))[3]. | Proposed listing. |
| 2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2) [5] | Proposed listing. |
| Jemez Mountain salamander (LPN = 2) [5] | Proposed listing. |

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

We intend that any proposed reclassification of *Solanum conocarpum* will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

*Solanum conocarpum* will be added to the list of candidate species upon publication of this 12-month finding. We will continue to evaluate this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (*see* **ADDRESSES** section).

## Authors

The primary authors of this notice are the staff members of the Caribbean Ecological Services Field Office.

## Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 10, 2011.

**Rowan W. Gould,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 2011–3730 Filed 2–18–11; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 223

**[Docket No. 101126590–0589–01]**

**RIN 0648–XZ59**

## Endangered and Threatened Species; Proposed Threatened Status for Subspecies of the Ringed Seal

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

**ACTION:** Notice of public hearings.

**SUMMARY:** On December 10, 2010, we, NMFS, published a proposed rule to list the Arctic (*Phoca hispida hispida*), Okhotsk (*Phoca hispida ochotensis*), Baltic (*Phoca hispida botnica*), and Ladoga (*Phoca hispida ladogensis*) subspecies of the ringed seal as threatened under the Endangered Species Act of 1973, as amended (ESA). As part of that proposal, we announced a public comment period to end on

February 8, 2011, and then extended the comment period to March 25, 2011. NMFS has received requests for public hearings on this issue. In response, we announce that public hearings will be held at three locations in Alaska (Anchorage, Barrow, and Nome) to provide additional opportunities and formats to receive public input.

**DATES:** A hearing will be held on March 7, 2011, from 6:30 p.m. to 8:30 p.m. in Anchorage, and on March 22, 2011, from 7 p.m. to 9:30 p.m. in Barrow, AK. The date and time for a hearing in Nome will be announced in a forthcoming notice in the **Federal Register**. As previously noted, we will consider written comments received on or before March 25, 2011.

**ADDRESSES:** The March 7, 2011, hearing will be held at the Egan Center (Lower Level), 555 West Fifth Avenue, Anchorage, AK. The March 22, 2011, hearing will be held at the Iñupiat Heritage Center, 5421 North Star Street, Barrow, AK. As noted above, we will announce the address for a hearing in Nome in a forthcoming notice in the **Federal Register**.

Send written comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XZ59, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. Comments will generally be posted 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.

We 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.

The proposed rule, status review report, and other materials relating to this proposal can be found on the Alaska Region Web site at: *http://alaskafisheries.noaa.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Tamara Olson, NMFS Alaska Region, (907) 271–5006; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 10, 2010 (75 FR 77476), we published a proposed rule to list the Arctic, Okhotsk, Baltic, and Ladoga subspecies of the ringed seal as threatened under the ESA. Based on the status of these subspecies, we also proposed protective regulations pursuant to section 4(d) of the ESA for these subspecies to include all of the prohibitions in section 9(a)(1) of the ESA. The original due date for comments on these proposed actions (February 8, 2011) was extended to March 25, 2011 (76 FR 6754; February 8, 2011).

## Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (*see* 50 CFR 424.16(c)(3)). In response to requests from various parties to hold public hearings in a number of locations in Alaska, we will hold three public hearings: One in Anchorage, one in Barrow, and one in Nome. We will accept oral and written comments on both the proposed rule for ringed seals and the proposed rule for bearded seals (75 FR 77496; December 10, 2010) during these hearings.

People wishing to make an oral statement for the record at a public hearing are encouraged to provide a written copy of their statement and present it to us at the hearing. In the event that attendance at the public hearings is large, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

**Authority:** 16 U.S.C. 1533 *et seq.*

Dated: February 15, 2011.

**Helen Golde,**

*Acting Director, Office of Protected Resources.*

[FR Doc. 2011–3883 Filed 2–16–11; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 223

**[Docket No. 101126591–0588–01]**

**RIN 0648–XZ58**

## Endangered and Threatened Species; Proposed Threatened Status for Distinct Population Segments of the Bearded Seal

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

**ACTION:** Notice of public hearings.

**SUMMARY:** On December 10, 2010, we, NMFS, published a proposed rule to list the Beringia and Okhotsk Distinct Population Segments (DPSs) of the bearded seal (*Erignathus barbatus*) as threatened under the Endangered Species Act of 1973, as amended (ESA). As part of that proposal, we announced a public comment period to end on February 8, 2011, and then extended the comment period to March 25, 2011. NMFS has received requests for public hearings on this issue. In response, we announce that public hearings will be held at three locations in Alaska (Anchorage, Barrow, and Nome) to provide additional opportunities and formats to receive public input.

**DATES:** A hearing will be held on March 7, 2011, from 6:30 p.m. to 8:30 p.m. in Anchorage, and on March 22, 2011, from 7 p.m. to 9:30 p.m. in Barrow, AK. The date and time for a hearing in Nome will be announced in a forthcoming notice in the **Federal Register**. As previously noted, we will consider written comments received on or before March 25, 2011.

**ADDRESSES:** The March 7, 2011, hearing will be held at the Egan Center (Lower Level), 555 West Fifth Avenue, Anchorage, AK. The March 22, 2011, hearing will be held at the Iñupiat Heritage Center, 5421 North Star Street, Barrow, AK. As noted above, we will announce the address for a hearing in Nome in a forthcoming notice in the **Federal Register**.

Send written comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XZ58, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the

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

• *Mail:* P.O. Box 21668, Juneau, AK 99802.

• *Fax:* (907) 586–7557.

• *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. Comments will generally be posted 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.

We 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.

The proposed rule, status review report, and other materials relating to this proposal can be found on the Alaska Region Web site at: *http://alaskafisheries.noaa.gov/.*

**FOR FURTHER INFORMATION CONTACT:** Tamara Olson, NMFS Alaska Region, (907) 271–5006; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 10, 2010 (75 FR 77476), we published a proposed rule to list the Beringia and Okhotsk Distinct Population Segments (DPSs) of the bearded seal as threatened under the ESA. Based on the status of these DPSs, we also proposed protective regulations pursuant to section 4(d) of the ESA for these DPSs to include all of the prohibitions in section 9(a)(1) of the ESA. The original due date for comments on these proposed actions (February 8, 2011) was extended to March 25, 2011 (76 FR 6754; February 8, 2011).

## Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (*see* 50 CFR 424.16(c)(3)). In response to requests from various parties to hold public hearings in a number of locations in Alaska, we will hold three public hearings: one in Anchorage, one in Barrow, and one in Nome. We will accept oral and written comments on both the proposed rule for bearded seals and the proposed rule for ringed seals (75 FR 77476; December 10, 2010) during these hearings.

People wishing to make an oral statement for the record at a public hearing are encouraged to provide a written copy of their statement and present it to us at the hearing. In the event that attendance at the public hearings is large, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us.

**Authority:** 16 U.S.C. 1533 *et seq.*

Dated: February 15, 2011.

**Helen Golde,**

*Acting Director, Office of Protected Resources.*

[FR Doc. 2011–3882 Filed 2–16–11; 4:15 pm]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 110207101–1097–01]**

**RIN 0648–BA54**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule that would implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would increase the commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2011 fishing year, provided that NMFS determines the total allowable catch (TAC) was not exceeded in the 2010 fishing year. This rule also proposes minor revisions to codified text, including revisions to the definition of "actual ex-vessel value," extending the maintenance window for the Gulf individual fishing quota (IFQ) programs, and removing obsolete codified text for Gulf grouper. The intended effect of this proposed rule is to help achieve optimum yield (OY) for Gulf red snapper without increasing the risk of the red snapper resource experiencing overfishing, allow for better functioning and enforcement of the Gulf IFQ programs, and to implement a technical correction to the regulations.

**DATES:** Written comments must be received on or before March 24, 2011.

**ADDRESSES:** You may submit comments on the proposed rule, identified by 0648–BA54, by any of the following methods:

• *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Rich Malinowski, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-rulemaking portal *http://www.regulations.gov,* enter "NOAA–NMFS–2011–0018" in the keyword search, then check the box labeled "Select to find documents accepting comments or submissions," then select "Send a comment or submission." NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this proposed rule will not be considered.

Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org;* or may be downloaded from the Council's Web site at *http://www.gulfcouncil.org/.*

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, 727–824–5308.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is

managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Background**

The Southeast Data, Assessment, and Review (SEDAR) update assessment for Gulf red snapper was conducted in August 2009 (SEDAR 9), with the objective of updating the SEDAR 7 benchmark assessment conducted in 2005 (SEDAR 7). To accomplish this goal, the 2009 SEDAR assessment updated, reviewed, and incorporated into the model all data included in SEDAR 7. The 2009 SEDAR update assessment projected that overfishing had ended for the red snapper stock, and therefore, TAC for this species may be increased. The stock, however, is still overfished and under a rebuilding plan.

The rebuilding plan for Gulf red snapper was outlined in Amendment 22 to the FMP, and implemented through regulations in 2005. The final rule implementing Amendment 22 to the FMP became effective on July 5, 2005 (70 FR 32266, June 2, 2005). Actions taken through Joint Amendment 27 to the FMP and Amendment 14 to the FMP for the Shrimp Fishery of the Gulf of Mexico (implemented February 28, 2008, 73 FR 5117, published January 29, 2008) revised the red snapper rebuilding strategy with the intent to end overfishing by 2009 or 2010, and to rebuild red snapper by 2032 to the biomass levels that can support harvest of the maximum sustainable yield (MSY). The revised rebuilding plan outlined that after 2010, TAC would be increased consistent with a fishing mortality rate that produces MSY.

In response to the rebuilding plan, the Council's Scientific and Statistical Committee (SSC) recommended 3 years of increasing acceptable biological catch (ABC) levels from 2010 through 2012. The ABC level for red snapper set by the SSC is 25-percent below the overfishing limit, which is also the rebuilding yield, to account for scientific uncertainty in the numbers. This buffer further increases the likelihood that red snapper will be rebuilt by 2032. In 2010, however, the Council and NMFS raised the TAC for 2010 only.

In February 2010, the Council submitted a regulatory amendment to set the red snapper TAC for 2010 at 6.945 million lb (3.150 million kg), which was the ABC recommended by the SSC. The Council chose not to set TACs beyond 2010 because of scientific uncertainty about future levels of red snapper stock, and concern regarding the likelihood of the recreational sector to overrun the quota. NMFS published a final rule on May 3, 2010 (75 FR 23186), implementing the February 2010 regulatory amendment. That rule set the commercial quota for Gulf red snapper at 3.542 million lb (1.607 million kg), and the recreational quota at 3.403 million lb (1.544 million kg). The final rule also included a closure date for the 2010 recreational sector based on estimates of when the recreational quota was projected to be caught. NMFS projected that the recreational sector quota for red snapper would be met after a 53-day fishing season, and on July 24, 2010, NMFS closed the recreational sector for red snapper. The Magnuson-Stevens Act requires NMFS to close the recreational red snapper sector in Federal waters when the quota is met or projected to be met.

Although NMFS had already projected a recreational season for red snapper for the 2010 fishing year, an unforeseen event occurred in April 2010 that contributed to the recreational quota not being met by the closure date. On April 20, 2010, the Deepwater Horizon MC252 deep-sea drilling rig exploded and sank off the coast of Louisiana. Because of the resulting oil spill, approximately one-third of the Gulf was closed to fishing for much of the summer. The direct loss of fishing opportunities due to the closure, plus the reduction in tourism throughout the Gulf coast, resulted in a much lower catch than had been projected. In a report dated August 13, 2009 (*http://sero.nmfs.noaa.gov/sf/pdfs/2010_Recreational_Red_Snapper_Quota_Closure_Analysis_Fall_Reopening.pdf*), NMFS estimated 2.3 million lb (1.1 million kg) of the 3.4 million lb (1.5 million kg) recreational quota remained unharvested. Consequently, on October 1, 2010, the Council and NMFS reopened the recreational red snapper season for 24 more fishing days (eight consecutive weekends—Fridays, Saturdays, and Sundays—through November 21, 2010). The reopening of the recreational red snapper season was intended to provide fishermen the opportunity to harvest the recreational red snapper quota and achieve the OY for the fishery.

At present, there is no evidence that the oil spill has adversely impacted the adult stock of red snapper, and the fishing mortality rate of red snapper remains below the overfishing threshold. The next SEDAR benchmark stock assessment currently scheduled for Gulf red snapper is in 2014.

**Management Measures Contained in This Proposed Rule**

This Gulf red snapper regulatory amendment would set the TAC for 2011 and subsequent fishing years at 7.185 million lb (3.259 million kg), provided that the 2010 TAC has not been exceeded. Based on the current commercial and recreational allocations (51-percent commercial and 49-percent recreational), the TAC would be implemented through this proposed rule by setting the Gulf red snapper commercial quota at 3.664 million lb (1.662 million kg), and the recreational quota at 3.521 million lb (1.544 million kg). However, if NMFS determines the combined commercial and recreational quota from 2010 was exceeded, NMFS will maintain the quota from 2010 in the 2011 fishing year. If this is the case, the Assistant Administrator will file a notification with the Office of the Federal Register to announce the commercial and recreational quotas will remain at the quotas of the 2010 fishing year.

The Magnuson-Stevens Act requires NMFS to close the recreational red snapper sector in Federal waters when the quota is met or projected to be met. NMFS will set the recreational season length for 2011 after finalized 2010 recreational landings data are available and before the season opens on June 1, 2011. NMFS may announce the recreational red snapper season in the final rule associated with this action.

The red snapper management measures contained in this proposed rule would achieve the goal of National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery.

**Additional Measures Contained in This Proposed Rule**

*IFQ Program Changes*

In § 622.2 of the current regulations, "actual ex-vessel value" is defined as the total monetary sale amount a fisherman receives from IFQ landings from a registered IFQ dealer. Many Gulf reef fish IFQ dealers, however, are reporting very low ex-vessel prices for IFQ fish because trip expenses and transferred (leased) allocation are deducted from the price paid by the dealer. Through this rulemaking, NMFS proposes to revise the definition of "actual ex-vessel value" in § 622.2 of the regulations, so that actual ex-vessel value represents the price paid per pound of fish before any deductions are made for transferred (leased) allocation and goods and

services (*e.g.,* bait, ice, fuel, repairs, machinery replacement, etc.). This revision will allow NMFS to more accurately analyze the total value of the Gulf red snapper and grouper and tilefish fisheries, and will more appropriately align the definition with the original intent of the IFQ programs.

Sections 622.16 and 622.20 of the current regulations restrict IFQ transactions during a 12-hour maintenance window at year-end. The regulations state that all transactions must be completed by 6 p.m. eastern time December 31 and may resume at 6 a.m. eastern time January 1 of the next year. This maintenance window is necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming fishing year if the commercial quotas for IFQ managed species have changed, and to update shares and allocations for the upcoming fishing year. This maintenance window, however, is too short to complete all of the necessary changes and updates to the IFQ program prior to the start of the next fishing year. This rulemaking proposes to extend the maintenance window an additional 8 hours to allow for more time to conduct end-of-year maintenance. It also clarifies how fishermen can submit an IFQ landing notification during the maintenance window. This revision is not expected to have any effects on fishermen or dealers. During the first 4 years of the Red Snapper IFQ program and first year of the Grouper-Tilefish IFQ program, no landing transactions were completed between 6 a.m. and 2 p.m. on January 1. Additionally, IFQ participants may still submit an advanced notice of landing during the maintenance window.

*Removing Obsolete Regulations*

In Amendment 30B to the FMP, NMFS removed the February 15–March 15 seasonal closure of the commercial sector of the Gulf reef fish fishery for gag, red grouper, and black grouper through a final rule that published April 16, 2009 (74 FR 17603). When the February 15–March 15 closure was effective, the sale and purchase of gag, red grouper, and black grouper was prohibited, as specified in § 622.45(c)(4). However, NMFS inadvertently did not remove § 622.45(c)(4) in the final rule for Amendment 30B. This rulemaking proposes to remove this obsolete paragraph.

These additional measures are unrelated to the actions contained in the red snapper regulatory amendment.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, 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. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The preamble of this proposed rule provides a statement of the need for and objectives of this rule, and it is not repeated here. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would be expected to directly affect commercial and for-hire fishing vessels that harvest red snapper in the Gulf of Mexico and federally permitted dealers who purchase IFQ species. Under the Regulatory Flexibility Act (RFA), an agency must complete an Initial Regulatory Flexibility Analysis (IRFA) with a proposed regulation if the proposed regulation is expected to have a significant economic impact on a substantial number of small entities. The Small Business Administration administers those provisions of the RFA, and has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the revenues threshold is $7.0 million (NAICS code 713990, recreational industries).

Based on logbook records, for the period 2007–2008, an average of 312 commercial vessels per year recorded red snapper landings in the Gulf. The total average annual ex-vessel revenues from all logbook-recorded harvests from all species for these vessels during this period was approximately $28.943 million (2008 dollars), of which approximately $9.435 million came from red snapper. The average annual total revenue per vessel for these commercial vessels during this period was approximately $93,000 (2008 dollars).

Some fleet activity occurs in the Gulf commercial reef fish fishery. Based on permit data, the maximum number of permits reported to be owned by the same entity is six, though additional permits may be linked through other affiliations which cannot be identified with current data. Using the average revenue per vessel provided above, the average annual estimated maximum combined revenues for this entity would be approximately $558,000 (2008 dollars).

The for-hire fleet in the Gulf is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. A Gulf reef fish for-hire permit is required to harvest red snapper in the Gulf. On December 17, 2010, there were 1,355 valid or renewable Gulf reef fish for-hire permits. A valid permit is a non-expired permit. Expired permits may not be actively fished, but are renewable for up to one year after expiration. Although the for-hire permit does not distinguish between headboats and charter vessels, an estimated 79 headboats and 1,276 charter vessels operate in the Gulf. It cannot be determined with available data how many of these for-hire vessels harvest red snapper, so all permitted vessels are assumed to comprise the universe of potentially affected for-hire vessels. The average charter vessel is estimated to earn approximately $88,000 (2008 dollars) in annual revenues, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

For seafood dealers, the SBA uses an employee threshold rather than a receipts threshold, or 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. On January 19, 2011, 190 dealers possessed a Federal permit to purchase reef fish species. All dealers with a Federal reef fish permit are eligible to obtain an account required to purchase IFQ species, however, on January 19, 2011, only 169 dealers had an IFQ account. No current information is available on the employment profile of these dealers.

Based on the average revenue estimates provided above, all commercial and for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities. Although no current information is available on the

employment profile of the dealers expected to be directly affected by this rule, if enacted, all dealers are determined for the purpose of this analysis to be small business entities.

This proposed rule would not establish any new reporting, record-keeping or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule, if implemented, is expected to result in an increase in commercial red snapper harvests and a longer red snapper recreational fishing season relative to the season that would occur without a TAC increase (the status quo). The increase in commercial red snapper harvests would be expected to increase commercial annual ex-vessel revenues to the whole commercial fleet by approximately $400,000, and a longer recreational red snapper fishing season would be expected to increase annual net operating revenues to the whole for-hire fleet by up to $225,000. Therefore, all of the expected direct economic impacts on small entities of this proposed rule, if implemented, are positive. No reduction in the revenues or profits of affected entities would be expected.

The proposed revision to the definition of "actual ex-vessel value" to mean price paid per pound of fish before any deductions are made for transferred (leased) allocation and goods and services, would be expected to affect fishermen and dealers who report ex-vessel prices net of cost deductions. Because cost recovery fees are based on the ex-vessel revenues, the proposed revision to the definition of ex-vessel value would be expected to result in an increase in cost recovery fees, potentially reducing revenues to both fishermen and dealers. While dealers would be expected to pass a portion of any increased cost recovery fees onto fishermen, thereby reducing fishing revenues, the competitive market may require dealers to absorb some portion of these increased fees.

The number of affected entities and the magnitude of effect cannot be determined with certainty at this time, but would be expected to vary by IFQ species and assumptions on the appropriate price threshold (*i.e.,* the baseline price for comparison). For example, based on 2010 red snapper IFQ data, if reported ex-vessel prices below the average ($3.48/lb), median ($4.00/lb), and mode ($4.25/lb) prices are adjusted to the respective threshold, the proposed revision would result in an increase in cost recovery fees, and total reduced revenues to all dealers and fishermen combined, of approximately $57,000, $76,000, and $88,000 under the respective thresholds. In 2010, assuming a threshold price of $3.00/lb, 29 dealers and 128 vessels recorded transactions with prices less than $3.00/lb. Comparable results for other IFQ species are approximately $13,000 to $20,000 and 9 dealers and 9 vessels ($2.00/lb threshold price; the average reported price was $3.14/lb) for red grouper; approximately $1,000 to $4,000 and 19 dealers and 42 vessels ($3.00/lb threshold price; the average reported price was $4.22/lb) for gag; approximately $6,000 to $3,000 and 11 dealers and 32 vessels ($3.00/lb threshold price; the average reported price was $3.36/lb) for deepwater grouper (the range in effects decreases when comparing from average price to median price to mode price for this group because the prices decline in that order, unlike the case for most other species); approximately $1,000 to $3,000 and 29 dealers and 55 vessels ($3.00/lb threshold price; the average reported price was $4.08/lb) for other shallow water grouper; and approximately $1,000 to a few hundred dollars and 16 dealers and 44 vessels ($1.00/lb threshold price; the average reported price was $1.83/lb) for tilefish. Overlap in affected dealers and vessels would be expected, but has not been tabulated.

Thus, the proposed revision to the definition of "actual ex-vessel value," would be expected to reduce revenues to fishermen and dealers. However, the proposed revision is consistent with the intent of the original requirement to report ex-vessel values and remit cost recovery fees based on said value. The proposed revision would simply result in fishermen and dealers reporting the values and remitting the cost recovery fees they have been expected to provide since the implementation of the IFQ program. Therefore, none of the expected effects constitute new direct adverse economic effects on the affected entities.

The proposed extension of the maintenance window would not be expected to have any adverse effects on fishermen or dealers because no transactions have historically been completed to date during the affected period. Finally, the proposed removal of obsolete text in the regulations is an administrative action and would not affect any small entities.

Because this proposed rule, if implemented, is not expected to have any direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: February 14, 2011.

**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 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, the definition of "actual ex-vessel value" is revised to read as follows:

### § 622.2 Definitions and acronyms.

* * * * *

*Actual ex-vessel value* means the total monetary sale amount a fisherman receives per pound of fish for IFQ landings from a registered IFQ dealer before any deductions are made for transferred (leased) allocation and goods and services (e.g. bait, ice, fuel, repairs, machinery replacement, etc.).

* * * * *

3. In § 622.16, paragraph (c)(5) is revised to read as follows:

### § 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas for Gulf red snapper have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–866–425–7627.

* * * * *

4. In § 622.20, paragraph (c)(5) is revised to read as follows:

**§ 622.20 Individual fishing quota (IFQ) program for Gulf groupers and tilefishes.**

* * * * *

(c) * * *

(5) *Restricted transactions during the 20-hour online maintenance window.* All electronic IFQ transactions must be completed by December 31 at 6 p.m. eastern time each year. Electronic IFQ functions will resume again on January 1 at 2 p.m. eastern time the following fishing year. The remaining 6 hours prior to the end of the fishing year, and the 14 hours at the beginning of the next fishing year, are necessary to provide NMFS time to reconcile IFQ accounts, adjust allocations for the upcoming year if the commercial quotas or catch allowances for Gulf groupers and tilefishes have changed, and update shares and allocations for the upcoming fishing year. No electronic IFQ transactions will be available during these 20 hours. An advance notice of landing may still be submitted during the 20-hour maintenance window by using the vessel's VMS unit or calling IFQ Customer Service at 1–866–425–7627.

* * * * *

5. In § 622.42, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

**§ 622.42 Quotas.**

* * * * *

(a) * * *

(1) * * *

(i) *Red snapper*—(A) For fishing year 2010—3.542 million lb (1.607 million kg), round weight.

(B) For fishing year 2011—3.664 million lb (1.662 million kg), round weight, provided that the combined commercial and recreational quota from the prior fishing year is not exceeded. If landings, as estimated by the SRD, indicate the combined quota is exceeded, then the AA will file a notification with the Office of the Federal Register to maintain the commercial quota at the quota of the prior fishing year.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper*—(A) The 2010 recreational quota for red snapper is 3.403 million lb (1.544 million kg), round weight.

(B) The 2011 recreational quota for red snapper is 3.521 million lb (1.597 million kg), round weight, provided that the combined commercial and recreational quota from the prior fishing year is not exceeded. If landings, as estimated by the SRD, indicate the combined quota is exceeded, then the AA will file a notification with the Office of the Federal Register to maintain the recreational quota at the quota of the prior fishing year.

* * * * *

**§ 622.45 [Amended]**

6. In § 622.45, paragraph (c)(4) is removed.

[FR Doc. 2011–3735 Filed 2–18–11; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 76, No. 35

Tuesday, February 22, 2011

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

### Forest Service

### National Urban and Community Forestry Advisory Council

**AGENCY:** Forest Service, USDA.

**ACTION:** 2011 Notice of Call for Nominations.

**SUMMARY:** The National Urban and Community Forestry Advisory Council, (NUCFAC) will be filling five positions that have expired at the end of December 2010. Interested applicants may download a copy of the application and position descriptions from the U.S. Forest Service's Urban and Community Forestry Web site: *http://www.fs.fed.us/ucf/.*

**DATES:** Nomination(s) must be "received" (not postmarked) by March 29, 2011.

**ADDRESSES:** Please submit electronic nomination(s) to: *nucfac_ucf_proposals@fs.fed.us.* The subject line should read: 2011 NUCFAC Nominations.

Nomination applications sent by courier should be addressed to: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151.

**FOR FURTHER INFORMATION CONTACT:** Nancy Stremple, Executive Staff or Mary Dempsey, Staff Assistant to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Facsimiles will not be accepted as official nominations. Application submission by e-mail or a courier service is recommended. Regular mail submissions are screened by Department mail services and may delay the receipt of the application up to a month.

A total of five positions will be filled. The following are the five positions that will serve a 3-year term from January 1, 2011, through December 31, 2013:

- One of two members representing a national non-profit forestry and/or conservation citizen organization;
- A member representing State government;
- A member representing county government;
- A member representing urban forestry, landscape, and design consultants;
- A member representing a professional renewable natural resource or arboriculture society.

Dated: February 14, 2011.

**Robin L. Thompson,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 2011–3821 Filed 2–18–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Kisatchie National Forest Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Kisatchie National Forest Resource Advisory Committee will meet in Natchitoches, Louisiana. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act.

**DATES:** The meeting will be held on March 8, 2011, and will begin at 6 p.m.

**ADDRESSES:** The meeting will be held at the Northwestern State University Friedman Student Union, President's Room, 735 University Parkway, Natchitoches, LA. Written comments should be sent to Holly Morgan, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360. Comments may also be sent via e-mail to *hmorgan@fs.fed.us,* or via facsimile to 318–473–7117.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360. Visitors are encouraged to call ahead to 318–473–7160 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Holly Morgan, RAC coordinator, USDA, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, LA 71360; (318) 473–7194; E-mail *hmorgan@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Welcome; (2) Review and approval of the minutes from the last meeting; (3) Presentation, Consideration, and Approval of Parish project proposals; (4) Set next meeting date; and (5) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: February 16, 2011.

**Michael L. Balboni,**

*Designated Federal Officer.*

[FR Doc. 2011–3965 Filed 2–18–11; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Plumas National Forest, Feather River Ranger District; California; On Top Hazardous Fuels Reduction Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The On Top Hazardous Fuels Reduction Project would construct a Defensible Fuel Profile Zone (DFPZ) across approximately 4,650 acres on

National Forest System (NFS) land to provide strategic locations for the suppression of high intensity wildfires. Group selection harvest would be implemented over an estimated 102 acres on NFS land to assist in regeneration of healthy, shade-intolerant species and to move the landscape towards an uneven-aged, multistory, fire-resilient forest. Prescriptions would treat surface, ladder, and crown fuels to reduce risk from wildfires to rural communities and forest resources, improve forest health, and contribute to the economic stability of rural communities.

**DATES:** Comments concerning the scope of the analysis must be received by 45 days from the date of publication in the **Federal Register**. The draft environmental impact statement is expected April 2011 and the final environmental impact statement is expected August 2011.

**ADDRESSES:** Send written comments to 875 Mitchell Avenue, Oroville, CA 95965. Comments may also be sent via e-mail to *Comments-pacificsouthwest-plumas-featherrivr@fs.fed.us*, or via facsimile to (530) 532–1210.

**FOR FURTHER INFORMATION CONTACT:** Mary Webb-Marek at (530) 534–6500; *mwebbmarek@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The USDA Forest Service is designing the On Top Hazardous Fuels Reduction Project on National Forest System land in compliance with the standards and guidelines in the Plumas National Forest Land and Resource Management Plan (1988), as amended by the Herger-Feinstein Quincy Library Group (HFQLG) Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision (ROD) (1999, 2003), legislatively extended from 2009 to 2012, per the Consolidated Appropriations Act (H.R. 2754), as amended by the Sierra Nevada Forest Plan Amendment FSEIS and ROD (2004).

Additionally, in December 2007, the Consolidated Appropriations Act, 2008 (H.R. 2764), stated that the 2003-adopted Healthy Forests Restoration Act (HFRA: Pub. L. 108–148) applies to HFQLG projects. The Healthy Forests Restoration Act (HFRA) of 2003 (16 U.S.C. at 1611–6591) emphasizes public collaboration processes for developing and implementing hazardous fuel reduction projects on "at-risk" National Forest System land, and also provides other authorities and direction to help restore healthy forests. The On Top Hazardous Fuels Reduction Project's Scoping Packet is available upon request in hardcopy at the Feather River Ranger District, 875 Mitchell Avenue, Oroville, CA, 95965, as well as in Portable Document Format (pdf) on the Plumas National Forest Web site, at *http://fs.usda.gov/plumas.*

## Purpose and Need for Action

The USDA Forest Service proposes to 1. Reduce the risk to rural communities and forest resources from wildfires by modifying hazardous fuel conditions; 2. Improve forest health by initiating a conversion to an uneven-aged, multistory, fire-resilient forest by implementing group selection harvests, and; 3. Contribute to the economic stability of rural communities near Bucks Lake and surrounding areas. The On Top Hazardous Fuels Reduction Project responds to the need for reducing surface fuel loading (needle litter, downed branches and logs) and low and mid-level tree densities, while modifying forest structure homogeneity and enhancing vegetative species diversity. The true fir forest type dominates much of the project area and a large portion of the landscape is represented by even-aged white fir/red fir with pine species as a minor component.

There is a need for increasing the amount of pine in the project area to enhance vegetative species diversity across the landscape. Additionally, white pine blister rust (Cronartium ribicola), a disease specific to the five-needled pines such as sugar pine, and root disease (Heterobasidium spp.) are normally endemic to the project area, but have become more prevalent and contribute to impaired growth and significant decay of existing trees. Communities within Plumas County and adjacent counties are reliant upon natural resource based industries and experience high seasonal fluctuation in employment. There is a need for employment and forest products produced by the implementation of the On Top Project, vital for those rural communities isolated from urban job markets.

## Proposed Action

The Feather River Ranger District of the Plumas National Forest proposes in 2012 to construct a Defensible Fuel Profile Zone (DFPZ) and improve forest health on 4,650 acres in the Bucks Lake area, between Soapstone Hill and Mt. Ararat, by mechanically thinning and biomass removal 2,220 acres (2,105 acres ground-based systems and 115 acres cable systems); hand thinning, piling and burning 1,010 acres; mechanically piling and burning 255 acres; masticating 215 acres; underburning 3,020 acres (800 acres underburn only and 2,220 acres follow-up underburn for mechanically thinned areas if necessary); group selection harvest 102 acres (ground-based systems); group selection site preparation 102 acres (mechanical piling and burning); group selection reforestation 102 acres; group selection release 102 acres (grubbing and/or cutting); no treatment 150 acres (currently meets desired conditions); and performing associated road work including 6.70 miles of temporary road construction and 6.40 miles of decommissioning temporary roads. The DFPZ is designed to occur along main travel corridors and ridges to compliment strategic control points in the event of a wildfire. Prescribed burn units are designed to use existing road systems to alleviate the need for ground disturbing control lines. Fuels treatments would follow Agee's four basic principles of effective fuels reduction: reduction of surface fuels, increase in canopy base heights, decrease in crown density and retention of large fire-resistant trees (Agee and Skinner, 2005).

## Possible Alternatives

The Feather River Ranger District of the Plumas National Forest proposes in 2012 an alternative that would solely address the need to reduce existing surface fuel loading (needle litter, downed branches, and logs) and low and mid-level tree densities. This alternative would construct a Defensible Fuel Profile Zone (DFPZ) across approximately 4,650 acres on National Forest System (NFS) land to provide strategic locations for the suppression of high intensity wildfires, in compliance with Forest Service Region 5 (California) Guidance on Court Order for a Non-commercial Funding Alternative (Memorandum and Order dated 11/04/2009, for Case 2:05–cv–00205–MCE–GGH [sec. C]).

## Responsible Official

Plumas National Forest Supervisor, Alice B. Carlton is the Responsible Official.

## Nature of Decision To Be Made

The Responsible Official will decide to implement this proposal, implement an alternative that moves the area towards the desired conditions, or not implement any proposed land management activities at this time.

**Preliminary Issues**

The Forest Service has identified the following preliminary issues including potential effects to aquatic, riparian and water quality, botanical resources, economic feasibility, heritage resources, scenic/visuals/recreation (Pacific Crest Trail), soil resources, watershed condition and wildlife habitat.

**Permits or Licenses Required**

Smoke permits are required from the Northern Sierra Air Quality Management District prior to any understory or pile burning. Sorting and removing Forest by-products from the site to commercial off-Forest vendors would involve some form of permits for road use, right-of-way, or use of private lands for landings and access.

**Scoping Process**

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A public meeting will be held at the Feather River District Office in Oroville, California on Tuesday, February 1, 2011 from 4:30 p.m. to 7 p.m.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however. There will be an objection process before the final decision is made and after the final EIS is mailed (36 CFR part 218). In order to be eligible to file an objection to the preferred alternative identified in the final EIS, specific written comments related to the project must be submitted during scoping or any other periods public comment is specifically requested on this EIS (36 CFR 218.5).

Dated: January 19, 2011.

**Alice B. Canton,**

*Forest Supervisor.*

[FR Doc. 2011–3658 Filed 2–18–11; 8:45 am]

**BILLING CODE 3410–11–M**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that briefing and planning meetings of the Vermont Advisory Committee to the Commission will convene at 10:30 a.m. (EST) on Monday, March 7, 2011, at the Vermont State House, 115 State Street, Room 11, Montpelier, VT 05633.

The purpose of the briefing is to discuss criminal justice data collection and analysis procedures. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by April 7, 2011. Written comments may be mailed, e-mailed, or faxed to the Eastern Regional Office (ERO). Persons who desire additional information may make their request by mail, e-mail, phone, or fax. *See* contact information below.

Records generated from these meetings may be inspected and reproduced at the ERO, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the ERO. *See* contact information below.

Persons who are deaf or hearing-impaired who will attend the meetings and require the services of a sign language interpreter should contact the ERO at least ten (10) days before the scheduled date of the meeting either by e-mail or TDD relay service. *See* contact information below.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

**Contact Information**

*Mailing address:* Eastern Regional Office, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 740, Washington, DC 20425.

*Telephone #:* 202–376–7533.

*Fax #:* 202–376–7548.

*E-mail address: ero@usccr.gov.*

*TDD:* Dial 711 for relay services and dial 202–376–7533.

Dated in Washington, DC, on February 15, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2011–3813 Filed 2–18–11; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Jersey State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act (FACA), that briefing and planning meetings will be convened by the New Jersey State Advisory Committee to the U.S. Commission on Civil Rights on Friday, March 4, 2011 at the Legislative Annex, 125 West State Street, Committee Room 6, Trenton, New Jersey 08625. In addition, the committee has scheduled a press conference at 1 p.m. (EST) in Room 1 of the Legislative Annex.

The purpose of the briefing is to review the accommodations that the New Jersey Department of Corrections provides to inmates with non-apparent disabilities, including mental health, learning, and developmental disabilities, as required by the Americans with Disabilities Act. The purpose of the planning meeting is to plan future activities. The purpose of the press conference is to discuss the committee's recent report titled *Overcoming the Barriers Faced by Immigrants.*

Members of the public are entitled to submit written comments; the comments must be received in the regional office by April 4, 2011. Written comments may be mailed, e-mailed, or faxed to the Eastern Regional Office (ERO). Persons who desire additional information may make their request by mail, e-mail, phone, or fax. See contact information below.

Records generated from these meetings may be inspected and reproduced at the ERO, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the ERO. See contact information below.

Persons who are deaf or hearing-impaired who will attend the meetings and require the services of a sign language interpreter should contact the ERO at least ten (10) days before the scheduled date of the meeting either by

e-mail or through the TDD relay service. See contact information below.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

**Contact Information**

*Mailing address:* Eastern Regional Office, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Suite 740, Washington, DC 20425.

*Telephone #:* 202–376–7533.

*Fax #:* 202–376–7548.

*E-mail address: ero@usccr.gov.*

*TDD:* Dial 711 for relay services and dial 202–376–5533.

Dated in Washington, DC, on February 15, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2011–3814 Filed 2–18–11; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Economics and Statistics Administration

### Bureau of Economic Analysis Advisory Committee

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

**DATES:** Friday, May 6, 2011, the meeting will begin at 9 a.m. and adjourn at 3:30 p.m.

**ADDRESSES:** The meeting will take place at the Bureau of Economic Analysis at 1441 L St., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gianna Marrone, Program Analyst, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; *telephone number:* (202) 606–9633.

*Public Participation:* This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Gianna Marrone of BEA at (202) 606–9633 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (202) 606–9633.

**SUPPLEMENTARY INFORMATION:** The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's twenty-second meeting.

Dated: February 4, 2011.

**Brian C. Moyer,**

*Deputy Director, Bureau of Economic Analysis.*

[FR Doc. 2011–3652 Filed 2–18–11; 8:45 am]

BILLING CODE 3510–06–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1739]**

### Approval for Expanded Manufacturing Authority, Foreign-Trade Subzone 116A, Motiva Enterprises, LLC (Oil Refinery), Port Arthur, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zone of Southeast Texas, grantee of Foreign-Trade Zone 116, has requested authority on behalf of Motiva Enterprises, LLC (Motiva), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 116A at the Motiva facilities in Port Arthur, Texas, (FTZ Docket 43–2010, filed 7–1–2010);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (75 FR 39662–39663, 7–15–2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restrictions listed below;

*Now, therefore,* the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 116A, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following restrictions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiner's report, Appendix "C");

—products for export;

—and, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 4th day of February 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–3894 Filed 2–18–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[T–1–2011]**

### Foreign-Trade Zone Subzone 22—Chicago, IL, Temporary/Interim Manufacturing Authority, Baxter Healthcare Corporation (Pharmaceutical and Biological Product Manufacturing), Notice of Approval

On January 18, 2011, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by the Illinois International Port District, grantee of FTZ 22, requesting temporary/interim manufacturing (T/IM) authority, on behalf of Baxter Healthcare Corporation (Baxter) to manufacture pharmaceutical and biological intravenous (I.V.) products under FTZ procedures within FTZ 22—Site 21, in Round Lake, Illinois.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/04) and 1480 (71 FR 55422, 9/22/06). The Baxter facility and activity in question had initially been proposed to the FTZ Board for subzone authority, including notice in the **Federal Register** inviting public comment (FTZ Doc. 60–2010, 75 FR 65448, 10/25/2010). To enable expedited authority for Baxter in the context of the FTZ Board's recent approval of the reorganization of FTZ 22 under the alternative site framework (ASF) (Board Order 1738, 1/12/2011, 76 FR 4285, 1/25/2011), FTZ 22 subsequently requested to designate the Baxter facility as a usage-driven site (Site 21, A27f-2–2011, 1/14/2011), and requested T/IM authority for Baxter's manufacturing of I.V. products. The foreign-origin component approved for this activity is laminated film (HTSUS 3920.10). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. As noted above, public comment had been sought on the specific proposed activity through the **Federal Register** notice published regarding the proposed subzone authority (FTZ Doc. 60–2010).

Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application for T/IM authority is approved, effective this date, until February 11, 2013, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: February 11, 2011.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–3890 Filed 2–18–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1741]**

### Reorganization of Foreign-Trade Zone 181 under Alternative Site Framework; Akron/Canton, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

*Whereas,* the Northeast Ohio Trade & Economic Consortium, grantee of Foreign-Trade Zone 181, submitted an application to the Board (FTZ Docket 49–2010, filed 8/17/2010) for authority to reorganize under the ASF with a service area of Ashtabula, Trumbull, Mahoning, Columbiana, Portage, Summit, Stark, Medina, Wayne and Richland Counties, Ohio, adjacent to the Cleveland Customs and Border Protection port of entry, FTZ 181's existing Sites 1, 3–6, and 8–27 would be categorized as magnet sites, and the grantee proposes an additional magnet site (Site 29);

*Whereas,* notice inviting public comment was given in the **Federal Register** (75 FR 51753–51754, 8/23/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to reorganize FTZ 181 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 3–5, 8, 10, 11, 14–21, 23, 25–27 and 29 if not activated by February 29, 2016, and to a seven-year ASF sunset provision for magnet sites that would terminate authority for Sites 6, 9, 12, 13, 22 and 24 if not activated by February 28, 2018.

Signed at Washington, DC, this 4th day of February, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–3895 Filed 2–18–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet March 15, 2011, 9 a.m., Room 4830, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

**Agenda**

*Public Session*

1. Opening remarks by the Chairman.
2. Opening remarks by Bureau of Industry and Security.
3. Export Enforcement update.
4. Regulations update.
5. Working group reports.
6. Automated Export System (AES) update.
7. Presentation of papers or comments by the Public.

*Closed Session*

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than March 8, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 9, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: February 16, 2011.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2011–3914 Filed 2–18–11; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–837]**

### Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review

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

**SUMMARY:** On August 16, 2010, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on polyethylene terephthalate film (PET Film) from Taiwan. *See Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 49902 (August 16, 2010) (*Preliminary Results*). The review was requested by DuPont Teijin Films, Mitsubishi Polyester Film of America, SKC, Inc., and Toray Plastics (America), Inc. (collectively, Petitioners). This review covers the following producers/exporters of the subject merchandise: Nan Ya Plastics Corporation, Ltd. (Nan Ya), and Shinkong Synthetic Fibers Corporation (SSFC) and Shinkong Materials Technology Co., Ltd. (SMTC) (collectively, Shinkong). The period of review (POR) is July 1, 2008, through June 30, 2009. Based on the results of our analysis of the comments received, we have made changes to the preliminary results, which are discussed in the "Changes Since the Preliminary Results" section, below. For the final dumping margins, see the "Final Results of Review" section, below.

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 428–3586 or (202) 428–1396, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 16, 2010, the Department published in the **Federal Register** the *Preliminary Results.* In the *Preliminary Results,* the Department preliminarily determined that, pursuant to 19 CFR 351.401(f), SSFC and SMTC should be treated as a single entity for purposes of calculating an antidumping margin. The Department also found that despite the passing of a single family member, Nan Ya was still affiliated with three U.S. customers through a family grouping. Subsequent to the publication of the *Preliminary Results,* these affiliated U.S. customers submitted revised sales datasets, as requested by the Department, to correct information regarding their reported product matching information, and to correct problems preventing the accurate consolidation of their sales data with Nan Ya's datasets. As a result, Nan Ya's margin has changed for these final results.

On December 10, 2010, the Department extended the deadline for issuing the final results until no later than February 14, 2011. *See Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review,* 75 FR 76954 (December 10, 2010).

On December 22, 2010, the Department determined that amorphous polyethylene terephthalate (APET) film products that are not biaxially-oriented, such as the APET products produced by Nan Ya, are not covered by the scope of the antidumping order on PET Film from Taiwan. *See* Memorandum from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Scope Ruling on Amorphous Polyethylene Terephthalate Film," December 22, 2010 (Scope Memorandum). The Department reached this conclusion after analyzing findings of the U.S. International Trade Commission regarding the delimiting nature of biaxial-orientation as a product characteristic of subject PET Film, as well as the Department's previous determination that biaxially-oriented APET is not within the scope of the antidumping duty (AD) order on PET Film from the People's Republic of China (PRC), for which the scope is essentially identical to the scope in the subject case, except for language excluding Roller transport cleaning film, and tracing and drafting film from the PRC AD order. *See* Memorandum to John M. Andersen, "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Scope Ruling on Amorphous Polyethylene Terephthalate Sheet, Glycol-modified Polyethylene Terephthalate Sheet, and Co-extruded Amorphous Polyethylene Terephthalate Sheet with Glycol-modified Polyethylene Terephthalate Sheets on the Outer Surfaces," January 7, 2010. As we noted in the Scope Memorandum, the exclusionary language referenced above was not relevant to the scope ruling with respect to the instant proceeding. Both Nan Ya and Shinkong informed the Department that they did not report sales of any merchandise within the scope ruling. Thus, no adjustments were needed to the *Preliminary Results* as a result of the scope ruling for either company.

The Department noted in the *Preliminary Results* that additional supplemental questions regarding quarterly cost information had been issued to both Nan Ya and Shinkong to determine whether it was appropriate to use shorter cost averaging periods in calculating cost of production and constructed value. After reviewing responses to these questionnaires, on December 23, 2010, the Department issued post-preliminary results of review and determined that the use of an alternative cost averaging methodology (*i.e.,* quarterly cost) was not warranted. Thus, the post-preliminary results of review resulted in no changes to either respondent's AD margin. *See* Memorandum from Mark Hoadley, Program Manager, Office 6, to Christian Marsh, Acting Deputy Assistant Secretary for Import Administration, "2008–2009 Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate (PET) Film from Taiwan: Post-Preliminary Analysis and Calculation Memorandum for Nan Ya Plastics Corporation, Ltd. (Nan Ya) and Shinkong Synthetic Fibers Corporation (Shinkong)" (Post-Preliminary Analysis Memorandum), December 23, 2010.

With the release of the Post-Preliminary Analysis Memorandum, the Department notified interested parties that they were to file their case briefs with the Department by January 7, 2011, and rebuttal briefs were to be filed by January 13, 2011, in accordance with 19 CFR 351.309(d)(1). *See* Memorandum from Gene Calvert, International Trade Compliance Analyst, AD/CVD Operations, Office 6 to All Interested Parties, "Deadlines for the Submission of Case Briefs and Rebuttal Briefs for the

Final Results in the Administrative Review," December 27, 2010. The Department received a timely case brief on January 7, 2011 from Petitioners raising certain issues with regard to Shinkong. Shinkong filed a rebuttal brief with the Department on January 13, 2011. Based on our analysis of the comments received, the weighted average margin for Shinkong has changed from the calculated margin in the *Preliminary Results.*

**Period of Review**

The POR is July 1, 2008, through June 30, 2009.

**Scope of the Order**

The products covered by the antidumping order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Imports of PET Film are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

**Analysis of Comments Received**

The issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Issues and Decision Memorandum for the Final Results" (Decision Memorandum), dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues addressed in the Decision Memorandum is appended to this notice. The Decision Memorandum is on file in the Department's Central Records Unit (Room 7046 in the main Department of Commerce building), and can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of the comments received, we have made adjustments to our margin calculations for Shinkong. Specifically, we have recalculated Shinkong's general and administrative (G&A) expenses, including certain costs associated with the sale of supplies, and excluding packing costs. We have also altered the manner in which we combined the G&A expenses of SSFC and SMTC (*i.e.,* the two companies collapsed to form "Shinkong"). Finally, we limited Shinkong's sales date to no later than shipment date. These adjustments are discussed in detail in the Decision Memorandum referenced above.

**Final Results of Review**

As a result of our review, we determine that the following weighted-average margins exist for the period of July 1, 2008, through June 30, 2009:

| Manufacturer/exporter | Weighted-Average Margin (percent) |
|---|---|
| Nan Ya Plastics Corporation, Ltd. | 20.76 |
| Shinkong Synthetic Fibers Corporation and Shinkong Materials Technology Co., Ltd. | 6.38 |

**Assessment Rates**

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will instruct CBP to liquidate entries of merchandise produced and/or exported by Nan Ya and Shinkong. For assessment purposes, where the respondents reported the entered value for their sales, we calculated importer-specific (or customer-specific) *ad valorem* assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. *See* 19 CFR 351.212(b). However, where the respondents did not report the entered value for their sales, we will calculate importer-specific (or customer-specific) per unit duty assessment rates. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate non-reviewed entries at the all-others rate of 2.40 percent from the investigation if there is no rate for the intermediate company(ies) involved in the transaction. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan,* 67 FR 44174 (July 1, 2002) (*Investigation Final Determination*).

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) For the companies covered by this review, the cash deposit rate will be the rates listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and, (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 2.40 percent, the all-others rate established in the less than fair value investigation. *See Investigation Final Determination.* These deposit requirements shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

**Notification Regarding Administrative Protective Orders**

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 14, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**Appendix I—Issues in Decision Memorandum Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan Final Results of Antidumping Duty Administrative Review for the Period: 07/01/2008–06/30/2009**

Comment 1: Shinkong's Cost Data do not Account for the Physical Characteristics of the Subject Merchandise

Comment 2: Shinkong Understates its Adjustment for General and Administrative Expenses

Comment 3: The Date of Sale for Shinkong's U.S. Sales

[FR Doc. 2011–3892 Filed 2–18–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

### Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews

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

**DATES:** *Effective Date:* February 22, 2011.

**SUMMARY:** On November 26, 2010, the Department of Commerce ("Department") published the preliminary results of the new shipper reviews of the antidumping duty order on wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC") covering sales of subject merchandise made by Dongguan Huansheng Furniture Co., Ltd. ("Huansheng"); Hangzhou Cadman Trading Co., Ltd. ("Cadman"); and Wanvog Furniture (Kunshan) Co., Ltd. ("Wanvog").[1] In accordance with 19 CFR 351.309(c)(ii), we gave interested parties an opportunity to comment on the *Preliminary Results.* Based on our analysis of the comments received, the Department has made changes to the *Preliminary Results.* The final dumping margins are listed below in the section entitled "Final Results of the New Shipper Reviews."

**FOR FURTHER INFORMATION CONTACT:** Rebecca Pandolph or Jeffrey Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3627 and (202) 482–2769, respectively.

**SUPPLEMENTARY INFORMATION:** We published the *Preliminary Results* for these new shipper reviews on November 26, 2010. In the *Preliminary Results,* the Department stated that interested parties were to submit case briefs within 30 days of publication of the *Preliminary Results* and rebuttal briefs within five days after the due date for filing case briefs.[2] On December 9, 2010, the Department extended the deadlines for the case briefs and rebuttal briefs until January 3, 2011 and January 10, 2011, respectively.[3] On January 3, 2011, the Department received case briefs from Huansheng and Wanvog. On January 10, 2011, the Department received a letter in lieu of a rebuttal brief from Cadman.

**Period of Review**

The period of review ("POR") is January 1, 2009, through December 31, 2009.

**Scope of the Order**

The product covered by the order is WBF. WBF is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[4] highboys,[5] lowboys,[6] chests of drawers,[7] chests,[8] door chests,[9] chiffoniers,[10] hutches,[11] and armoires;[12] (6) desks, computer stands, filing cabinets, bookcases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs,

[1] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews,* 75 FR 72794 (November 26, 2010) ("*Preliminary Results*").

[2] *See Preliminary Results,* 75 FR at 72800.

[3] *See* Memorandum to All Interested Parties regarding, "Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People's Republic of China," dated December 9, 2010.

[4] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[5] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[6] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[7] A chest of drawers is typically a case containing drawers for storing clothing.

[8] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[9] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[10] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[11] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[12] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, bookcases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [13] (9) jewelry armoires; [14] (10) cheval mirrors; [15] (11) certain metal parts; [16] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds [17] and (14) toy boxes.[18]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 [19] of the U.S. Harmonized Tariff Schedule ("HTSUS") as "wooden * * * beds" and under subheading 9403.50.9080 of the HTSUS as "other * * * wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as "parts of wood." Subject merchandise may also be entered under subheadings 9403.50.9041 or 9403.60.8081.[20] Further, framed glass mirrors may be entered under subheading 7009.92.1000 [21] or 7009.92.5000 of the HTSUS as "glass mirrors * * * framed." The order covers all WBF meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**Analysis of Comments Received**

All issues raised in the case briefs by parties in these reviews are addressed in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Results of the 2009 Annual New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China," dated February 14, 2010 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues that parties raised and to which the Department responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit in room 7046 in the main Commerce Department building, and is also accessible on the Web at *http://ia.ita.doc.gov/frn*>. The paper copy and electronic version of the memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of the comments received, we have made the following changes to our *Preliminary Results:*

- We have recalculated surrogate financial ratios using a different group of financial statements from those used in the *Preliminary Results.*[22]
- Due to a ministerial error, we used the wrong surrogate to value Wanvog's non-adhesive expanded polyethylene ("EPE") input. In the final results, we used data under Philippine Harmonized Tariff Schedule subheading 3920.1090 to value Wanvog's non-adhesive EPE input.[23]
- We based the surrogate value for brokerage and handling on the World Bank sub-national reported entitled "*Doing Business 2011: Making a Difference for Entrepreneurs*" and excluded from the brokerage and handling value the line item for inland transportation and handling.[24]

[13] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[14] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning "Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China," dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part*, 71 FR 38621 (July 7, 2006).

[15] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

[16] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[17] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

[18] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials ("ASTM") standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum "Wooden Bedroom Furniture From the People's Republic of China: Scope Ruling on a White Toy Box," dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[19] These HTSUS numbers, as well as the numbers in footnote 16, reflect the HTSUS numbers currently in effect. These numbers differ from those used in the last completed antidumping duty administrative review of WBF from the PRC because the HTSUS has been revised.

[20] These HTSUS numbers have been added to the scope in this segment of the proceeding.

[21] *Id.*

[22] *See* Issues and Decision Memorandum at Comment 1.

[23] *See* Issues and Decision Memorandum at Comment 2.

[24] *See* Issues and Decision Memorandum at Comment 3.

**New Shipper Status**

No party has contested the *bona fide* nature of Cadman's, Huansheng's, or Wanvog's sale(s) during the POR. Therefore, for these final results we find, as in the *Preliminary Results,* that the new shipper sales made by Cadman, Huansheng, and Wanvog were made on a *bona fide* basis.

**Surrogate Country**

Since the *Preliminary Results,* no interested party has commented on the selection of the Philippines as the surrogate country. Therefore, we continue to determine that the Philippines is the appropriate surrogate country for the final results of these new shipper reviews.

**Separate Rates**

The Department found in the *Preliminary Results* that because Wanvog was wholly foreign-owned, further analysis is not necessary to determine whether Wanvog's export activities are independent from government control.[25] The Department also found in the *Preliminary Results* that Cadman and Huansheng both demonstrated a lack of *de jure* and *de facto* government control with respect to their export activities, and preliminarily determined that they were eligible for a separate rate.[26] No party has contested the separate rate status of Cadman, Huansheng, or Wanvog during the POR. Therefore, for the final results, we continue to determine that Wanvog, Cadman, and Huansheng are eligible for a separate rate.

**Final Results of the New Shipper Reviews**

The Department has determined that the following final dumping margins exist for the period January 1, 2009, through December 31, 2009:

| Exporter-Producer | Weighted-average margin (percent) |
|---|---|
| Dongguan Huansheng Furniture Co., Ltd., Exporter/Producer ..... | 0.00 |
| Wanvog Furniture (Kunshan) Co., Ltd., Exporter/Producer ..... | 0.00 |
| Hangzhou Cadman Trading Co., Ltd., Exporter, and Haining Changbei Furniture Co., Ltd., Producer .... | 0.00 |

**Assessment**

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries pursuant to 19 CFR 351.212(b). For importers/customers of a respondent where the respondent reported entered values, we have calculated an *ad valorem* rate for that importer/customer by dividing the total amount of antidumping duties calculated for the examined sales of subject merchandise by the total entered value of those transactions. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of these new shipper reviews. Where an importer–specific *ad valorem* rate is *de minimis,* the Department will order CBP to liquidate appropriate entries without regard to antidumping duties.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate will be the rate shown for that combination; (2) for subject merchandise exported by Huansheng but not produced by Huansheng, exported by Wanvog but not produced by Wanvog, and exported by Cadman but not produced by Haining Changbei Furniture Co., Ltd. ("Haining Changbei"), the cash deposit rate will continue to be the PRC-wide rate of 216.01 percent; (3) for subject merchandise produced by Huansheng but not exported by Huansheng or produced by Wanvog but not exported by Wanvog, the cash deposit rate will be the rate applicable to the exporter; and (4) for subject merchandise produced by Haining Changbei but not exported by Cadman, the cash deposit rate will be the rate applicable to the exporter. These deposit requirements shall remain in effect until further notice.

**Notification of Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results and notice in accordance with sections 751(a)(2)(B), 751(a)(2)(C), and 777(i) of the Act and 19 CFR 351.214(h) and 19 CFR 351.221(b)(5).

Dated: February 14, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**Appendix I**

Issue 1: Financial Ratios
Issue 2: Surrogate Value for Wanvog's EPE Input
Issue 3: Surrogate Value for Brokerage and Handling

[FR Doc. 2011–3908 Filed 2–18–11; 8:45 am]

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[25] *See Preliminary Results,* 75 FR at 72797.

[26] *See id.*

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–849]**

### Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

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

**ACTION:** Notice of Preliminary Determination of Circumvention of Antidumping Duty Order.

**SUMMARY:** We preliminarily determine that imports from the People's Republic of China (PRC) of certain cut-to-length carbon steel plate products with 0.0008 percent or more boron, by weight, regardless of the producer or exporter or importer of the merchandise, and otherwise meeting the description of in-scope merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC.

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Steve Bezirganian or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1131 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 17, 2010, ArcelorMittal USA, Inc., Nucor Corporation, SSAB N.A.D., Evraz Claymont Steel and Evraz Oregon Steel Mills (collectively Domestic Producers) requested that the Department of Commerce (the Department) make a final circumvention ruling with respect to certain cut-to-length carbon steel plate produced by Wuyang Iron and Steel Co., Ltd. (Wuyang), regardless of the exporter or importer, or imported by Stemcor USA Inc. (Stemcor), regardless of the producer or exporter, which contain 0.0008 percent or more, by weight, of boron. The Department initiated an antidumping circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act). *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Initiation of Antidumping Circumvention Inquiry,* 75 FR 21241 (April 23, 2010) (*Initiation Notice*). That initiation indicated the merchandise subject to the inquiry was produced by Wuyang Iron and Steel Co., Ltd. (Wuyang), but also noted the Department intended "to address whether its circumvention ruling will apply to particular producers, exporters and/or importers (*e.g.,* Stemcor) or to all U.S. imports" of certain cut-to-length carbon steel plate from the PRC. *Id.* at 21242.

On May 3, 2010, the Department issued a questionnaire to Wuyang. On June 1, 2010, Wuyang submitted its response to that questionnaire. On July 2, 2010, Nucor Corporation submitted comments on Wuyang's questionnaire response. On July 22, 2010, Domestic Producers submitted additional information they indicated is relevant to the inquiry. On October 22, 2010, the Department issued a supplemental questionnaire to Wuyang, and on November 23, 2010, Wuyang provided its response to that supplemental questionnaire. On December 8, 2010, the Department issued another supplemental questionnaire to Wuyang, and on December 16, 2010, Wuyang provided its response to that supplemental questionnaire. SSAB N.A.D., Evraz Claymont Steel and Evraz Oregon Steel Mills submitted comments and new information on January 3, 2011. On January 21, 2011, the following each submitted new information and/or comments: Wuyang, Nucor, and ArcelorMittal USA, Inc.

## Scope of the Order

The product covered by this order is certain cut-to-length carbon steel plate from the People's Republic of China. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. Specifically excluded from subject merchandise within the scope of this order is grade X–70 steel plate.

## Merchandise Subject to the Minor Alterations Antidumping Circumvention Proceeding

The merchandise subject to this antidumping circumvention inquiry (Inquiry Merchandise) consists of all merchandise produced by Wuyang containing 0.0008 percent or more boron, by weight, and otherwise meeting the requirements of the scope of the antidumping duty order as listed under the "Scope of the Order" section above, with the exception of merchandise meeting all of the following requirements: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.,* Jominy test) result indicating a boron factor of 1.8 or greater. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7225.40.3050, 7225.99.0090, 7226.91.5000, and 7226.99.0180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of Inquiry Merchandise is dispositive.

## Legal Framework

Section 781(c) of the Act, dealing with minor alterations of merchandise, states: (1) In general. The class or kind of merchandise subject to—(A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

Section 351.225(i) of the Department's regulations states that under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

## Criteria for Analysis

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered "minor," the legislative history of this provision indicates there are certain factors that should be considered before reaching a circumvention determination. Previous circumvention cases [1] have relied on the

[1] *See, e.g., Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada,* 65 FR 64926, 64929 (October 31, 2000) (unchanged in final results, 66 FR 7617, 7618 (January 24, 2001))

factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Tariff Act of 1930 to include the anti-circumvention provisions contained in section 781), which states:

{i}n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as *the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.*[2]

In the case of an allegation of a "minor alteration" under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report (Senate Report Criteria) to determine if circumvention exists in a particular case. *See, e.g., Canadian Plate,* 65 FR at 64929. In circumvention cases we sometimes analyze additional criteria to determine if circumvention of the order is taking place. *Id.* at 64930. These may be case-specific. For example, in *Canadian Plate* additional factors analyzed included the circumstances under which the products entered the United States, the timing of the entries during the circumvention review period, and the quantity of merchandise entered during the circumvention review period. *Id.* at 64930–31. In a more recent circumvention case, the additional factors analyzed included not only the timing of the entries during the period, but also other factors, such as the input of customers in the design phase. *See Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China,* 73 FR 63684 (October 27, 2008), unchanged in *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China,* 74 FR 20920 (May 6, 2009).

*Analysis*

We examined the evidence and argument submitted by interested parties in the course of this inquiry in the context of the Senate Report Criteria and an additional factor, the timing of the entries during the period.

Based on our review of the record evidence and our analysis of the comments received, the Department preliminarily determines that imports from the PRC of Inquiry Merchandise produced by Wuyang are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. For a complete discussion of the Department's analysis, see the Preliminary Analysis Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, for the Producer known as Wuyang Iron and Steel Co., Ltd. (Preliminary Analysis Memorandum), dated concurrently with this notice.

As explained in the Preliminary Analysis Memorandum, we preliminarily determine that the Inquiry Merchandise has the same physical characteristics as products in the scope of the order on certain cut-to-length carbon steel plate from the PRC and the *ITC Final Report* except for the presence of boron in excess of 0.0008 percent, by weight.[3] We find no evidence of significant differences in the physical characteristics, the expectations of the ultimate users, uses of the merchandise, or channels of marketing between products in the scope of the order and the Inquiry Merchandise. We find that the only difference in the production process is the addition of the boron, and the cost of such boron is insignificant. *See* Preliminary Analysis Memorandum.

As a result of our inquiry, we preliminarily determine that imports from the PRC of Inquiry Merchandise produced by Wuyang, regardless of the exporter or the importer of the merchandise, are within the class or kind of merchandise subject to the order on certain cut-to-length carbon steel plate from the PRC. *See* section 781(c) of the Act.

**Application of Ruling to Inquiry Merchandise Regardless of Producer**

As noted above, the Department preliminarily finds Inquiry Merchandise produced by Wuyang circumventing the order. The Department reached a similar conclusion in its previous circumvention inquiry involving cut-to-length carbon steel plate from the PRC, where the Department found a producer and an importer circumventing the order. *See Tianjin Plate.*[4] In that case, three criteria were identified that, collectively, and in conjunction with the presence of 0.0008 percent or more boron, by weight, distinguish the resulting merchandise from merchandise covered by the scope of the order: aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.,* Jominy test) result indicating a boron factor of 1.8 or greater. Those three distinguishing criteria were identified in the *Initiation Notice,* and no parties have suggested other objective criteria that would result in merchandise with 0.0008 percent or more, by weight, of boron being distinguishable from subject merchandise.

The Department indicated in the *Initiation Notice* that it would consider applying the results of the current inquiry to Inquiry Merchandise regardless of producer. *See Initiation Notice.* No parties have commented on this. The current inquiry and *Tianjin Plate* demonstrate that circumvention through use of boron has involved multiple parties producing and importing different specifications of plate. Therefore, the Department preliminarily determines that all merchandise, regardless of producer, containing 0.0008 percent or more boron and otherwise meeting the description of the scope, and not meeting the three distinguishing criteria listed above, are covered by the order. The Department has applied rulings in other circumvention inquiries on a country-wide basis. *See, e.g., Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Folding Metal Tables and Chairs from the People's Republic of China,* 74 FR 20920 (May 6, 2009), and *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 71 FR 59075

(*Canadian Plate*); *Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan,* 68 FR 33676, 33679 (June 5, 2003); and *Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 74 FR 33991 (July 14, 2009) (unchanged in final results, 74 FR 40565, 40566 (August 12, 2009)) (*Tianjin Plate*).

[2] Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess., at 100 (1987) (emphasis added).

[3] Furthermore, Wuyang does not claim that the merchandise it shipped meets the additional requirements that would exclude it from this circumvention inquiry (*i.e.,* aluminum level of 0.02 percent or greater, by weight; a ratio of 3.4 to 1 or greater, by weight, of titanium to nitrogen; and a hardenability test (*i.e.,* Jominy test) result indicating a boron factor of 1.8 or greater), and the documentation on the record regarding the merchandise Wuyang manufactured and sold to the United States does not indicate those additional criteria were met.

[4] Furthermore, such a conclusion was reached in another proceeding involving plate products. *See Canadian Plate.*

(October 6, 2006). While we preliminarily determine that imports from the PRC of Inquiry Merchandise are subject to the order on certain cut-to-length carbon steel plate from the PRC, interested parties are not precluded by this determination from applying for a ruling as to whether a particular product is within the scope of the order. *See* 19 CFR 351.225(c).

**Conclusion**

As noted above, we preliminarily determine that imports from the PRC of Inquiry Merchandise are subject to the order on certain cut-to-length carbon steel plate from the PRC. Also as noted above, we preliminarily determine that imports of such products are subject to the order regardless of the producer.

**Suspension of Liquidation**

In accordance with section 351.225(l)(2) of the Department's regulations, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of Inquiry Merchandise (regardless of producer) entered, or withdrawn from warehouse, for consumption on or after April 23, 2010, the date of the initiation of this inquiry. We will also instruct CBP to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after April 23, 2010, the date of the initiation of this inquiry, in accordance with section 351.225(l)(2) of the Department's regulations.

**Public Comment**

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 20 days of the publication of this notice. *See* 19 CFR 351.225(f)(3). Interested parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, no later than 10 days after the date on which the case briefs are due. *Id.* Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This preliminary determination of circumvention is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: February 14, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–3889 Filed 2–18–11; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Stanford University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW., Washington, DC.

*Docket Number:* 10–070. *Applicant:* Stanford University, Stanford CA 94305. *Instrument:* Electron Microscope.

*Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 76 FR 2647, January 14, 2011.

*Docket Number:* 10–071. *Applicant:* Stanford University, Stanford, CA 94305. *Instrument:* Electron Microscope.

*Manufacturer:* FEI Company, the Netherlands. *Intended Use:* See notice at 76 FR 2647, January 14, 2011.

*Docket Number:* 10–074. *Applicant:* Wake Forest University Health Sciences, Winston-Salem, NC 27157. *Instrument:* Electron Microscope.

*Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 76 FR 2647, January 14, 2011.

*Docket Number:* 10–075. *Applicant:* The Virginia Tech Carilion Research Institute, Roanoke, VA 24016. *Instrument:* Electron Microscope.

*Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 76 FR 2647, January 14, 2011.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: February 15, 2011.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement Office, Import Administration.*

[FR Doc. 2011–3915 Filed 2–18–11; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–909]**

### Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Review

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

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ricardo Martinez, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4532.

**Background**

The antidumping duty order on certain steel nails from the People's Republic of China ("PRC") was published in the **Federal Register** on August 1, 2008. *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China,* 73 FR 44961 (August 1, 2008). On August 27, 2010, we received a timely request for a new shipper review from Shanghai Colour Co., Ltd. ("Shanghai Colour") in accordance with 19 CFR 351.214(c) and 351.214(d)(2). On October 4, 2010, the Department published a notice of initiation of the new shipper review of certain steel nails from the PRC covering the period of August 1, 2009, through July 31, 2010. *See Certain Steel Nails from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 75 FR 61132 (October 4, 2010). The preliminary results are currently due no later than March 27, 2011.

**Statutory Time Limits**

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the "Act"), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19

CFR 351.214 (i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See also* 19 CFR 351.214 (i)(2).

**Extension of Time Limit of Preliminary Results**

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including Shanghai Colour's multiple production stages for subject merchandise and the need to evaluate the *bona fide* nature of Shanghai Colour's sales. The Department finds that these extraordinarily complicated issues require additional time to evaluate. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the preliminary results by 120 days, until no later than July 25, 2011. The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: February 10, 2011.

**Gary Taverman,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–3541 Filed 2–18–11; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–924]**

### Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review

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

**SUMMARY:** On August 16, 2010, the Department of Commerce ("Department") published the *Preliminary Results* of the first administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip ("PET film") from the People's Republic of China ("PRC").[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculation for the final results. We find that the participating respondents in this review, the two mandatory respondents Fuwei Films (Shandong) Co., Ltd. ("Fuwei Films"), Shaoxing Xiangyu Green Packing Co., Ltd. ("Green Packing"), and Tianjin Wanhua Co., Ltd. ("Wanhua") (collectively, "Respondents"), sold subject merchandise at less than normal value during the period of review ("POR"), November 6, 2008, through October 31, 2009.

**DATES:** *Effective Date:* February 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3936.

**SUPPLEMENTARY INFORMATION:**

**Background**

As noted above, on August 16, 2010, the Department published the *Preliminary Results* of this administrative review. Between September 28, 2010 and October 5, 2010, we received case and rebuttal briefs from Petitioners[2] and Respondents. On September 28, 2010, we also received written arguments from Bemis Company, Inc., an industrial user of PET film. On October 18, 2010, the Department placed a revised wage rate calculation on the record for comment. Between October 26, 2010 and November 1, 2010, we received comments and rebuttal comments from Petitioners and Respondents regarding the revised wage rate calculation. On November 15, 2010, the Department published a notice extending the time period for issuing the final results by 60 days to February 14, 2011.[3] On November 22, 2010, the Department held a public hearing of the arguments presented in the interested parties' submissions.

**Analysis of Comments Received**

All issues raised in the case briefs by parties are addressed in the "Issues and Decision Memorandum for the Final Results in the Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China," which is dated concurrently with this notice ("I&D Memo"). A list of the issues which parties raised, and to which we respond in the I&D Memo, is attached to this notice as an Appendix. The I&D Memo is a public document and is on file in the Central Records Unit ("CRU"), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

**Final Partial Rescission of Administrative Review**

In the *Preliminary Results,* the Department preliminarily rescinded the administrative review with respect to Sichuan Dongfang Insulating Material Co., Ltd. ("Dongfang"). Dongfang reported that it had no shipments of subject merchandise to the United States during the POR.[4] As we stated in the *Preliminary Results,* our examination of shipment data from U.S. Customs and Border Protection ("CBP") for Dongfang confirmed that there were no entries of subject merchandise from Dongfang during the POR.[5] We also received no comments or information to change our preliminary rescission. Therefore, we are rescinding this administrative review with respect to Dongfang.

**Changes Since the Preliminary Results**

Based on a review of the record, as well as comments received from parties regarding our *Preliminary Results,* we have made revisions to Respondents' margin calculations for the final results.[6] Pursuant to a recent decision

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[1] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review,* 75 FR 49893 (August 16, 2010) ("*Preliminary Results*").

[2] DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, "Petitioners").

[3] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review,* 75 FR 69629 (November 15, 2010).

[4] *See Preliminary Results,* 75 FR at 49894.

[5] *Id.*

[6] In the *Preliminary Results,* the Department stated that it had "valued electricity using rates for large industries at 33 Kilo Volts, as published by the Central Electricity Authority of the Government of India in 'Electricity Tariff & Duty and Average Rates of Electricity Supply in India,' dated March 2008." *See Preliminary Results,* 75 FR at 49898. This statement in the **Federal Register** notice was an error, as the Department had actually averaged all tax-exclusive rates for electricity for small, medium, and large industries as published in the above-mentioned report. *See* Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip

Continued

by the Court of Appeal for the Federal Circuit [7], subsequent to the *Preliminary Results,* we calculated a revised hourly wage rate to use in valuing Respondents' reported labor.[8] Additionally, we have: (1) Revised the calculated surrogate overhead, selling, general and administrative expenses, and profit applicable to Respondents using information from the financial statements of JBF Industries Limited, a manufacturer in India of merchandise comparable to subject merchandise; [9] (2) revised the surrogate value for bright polyester chips and master batch chips by using the simple-average of the two weighted average surrogate values for merchandise of Indian Harmonized Tariff Schedule subheadings 3907.60.10 and 3907.6020; [10] (3) revised the surrogate value for steam by using information more contemporaneous with the POR; [11] and (4) recalculated Fuwei Films' indirect selling expenses pursuant to the Department's established policy and practice.[12]

**Scope of the Order**

The products covered by the order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metalized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States ("HTSUS"). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

**Non-Market Economy Treatment**

The Department considers the PRC to be a non-market economy ("NME") country.[13] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this review. Therefore, the Department continues to treat the PRC as an NME country for purposes of these final results.

**Surrogate Country**

In the *Preliminary Results,* the Department stated that it selected India as the appropriate surrogate country to use in this administrative review for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; and (3) the Department has reliable data from India that it can use to value the factors of production.[14] While the Department received comments on the surrogate country issue after the *Preliminary Results,* the Department has not made changes to its findings with respect to the selection of a surrogate country for the final results.[15]

**Separate Rates**

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[16]

In the *Preliminary Results,* the Department found that the two mandatory respondents and Wanhua demonstrated eligibility for separate-rate status.[17] Since the publication of the *Preliminary Results,* no party has commented on the eligibility of the two mandatory respondents and Wanhua for separate-rate status. For the final results, the Department continues to find that the evidence placed on the record of this administrative review by the two mandatory respondents and Wanhua demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the subject merchandise. Thus, the Department continues to find that the two mandatory respondents and Wanhua are eligible for separate-rate status.

The separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA").[18] In this administrative review both mandatory respondents, Fuwei Films and Green Packing, have estimated weighted-average dumping margins which are above *de minimis* and which are not based on total AFA. Therefore, because there are only two relevant weighted-average dumping margins for these final results and because using a weighted-average risks disclosure of business proprietary information, the separate rate is a simple-average of these two values, which is 36.93 percent.[19]

**PRC-Wide Entity**

In the *Preliminary Results,* the Department determined that certain PRC exporters failed to recertify their separate rates using the separate rate certification provided at the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* to demonstrate their continued eligibility for separate-rate status. Also, Shanghai Xishu Electric Material Co., Ltd. ("Xishu") and Shanghai Uchem Co., Ltd. ("Uchem") did not make a claim that they did not ship or sell subject merchandise to the United States during the POR.[20] Thus, the Department treated

from the People's Republic of China: Selection of Factor Values," dated August 9, 2010, at 4. No parties commented on this error, but the Department notes that there is no change with respect to the calculation of the surrogate value for electricity between the *Preliminary Results* and these final results of review.

[7] *See Dorbest Ltd.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010).

[8] *See* Memorandum from Thomas Martin to The File, "First Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Industry-Specific Wage Rate Selection," dated October 18, 2010.

[9] *See* I&D Memo at Comment 2; *see also* Memorandum to the File through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, from Thomas Martin, International Trade Compliance Analyst, "Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Changes to Surrogate Values for the Final Results of Review," dated February 14, 2011 ("Final Surrogate Values Memorandum") at 2.

[10] *See* I&D Memo at Comment 3.

[11] *See* I&D Memo at Comment 4; *see also* Final Surrogate Values Memorandum at 3.

[12] *See* I&D Memo at Comment 9.

[13] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[14] *See Preliminary Results,* 75 FR at 49896.

[15] *See* I&D Memo at Comment 1.

[16] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[17] *See Preliminary Results,* 75 FR at 49895.

[18] *See* section 735(c)(5)(A) of the Act.

[19] *See Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587, 47591 (August 14, 2008).

[20] *See Preliminary Results,* 75 FR at 49895.

these PRC exporters as part of the PRC-wide entity. The Department also found that the PRC-wide entity did not respond to our requests for information.[21] No additional information was placed on the record with respect to any of these companies after the *Preliminary Results.* Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on facts available.

Because the Department begins with the presumption that all companies within an NME country are subject to government control, and because only the mandatory respondents and Wanhua have overcome that presumption, the Department is applying a single antidumping rate (*i.e.,* the PRC-wide entity rate) to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate.[22] The PRC-wide entity rate applies to all entries of subject merchandise except for entries from the two mandatory respondents and Wanhua.

**Final Results of Review**

The dumping margins for the POR are as follows:

| Exporter | Antidumping duty percent margin |
|---|---|
| Fuwei Films (Shandong) Co., Ltd. | 30.91 |
| Shaoxing Xiangyu Green Packing Co., Ltd. | 42.94 |
| Tianjin Wanhua Co., Ltd. | 36.93 |
| PRC-wide Entity[23] | 76.72 |

[23] Xishu and Uchem are part of the PRC-wide entity.

**Assessment**

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific (or customer) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.*

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in these final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 76.72 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 14, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**Appendix I—Issues & Decision Memorandum**

Issue 1: Selection of Surrogate Financial Statements.
Issue 2: Whether the Department should select Thailand as the surrogate country rather than India.
Issue 3: Whether the Department should continue to use Indian imports of Harmonized Tariff Schedule ("HTS") classification 3907.60.20 to value Bright Polyester Chip and Master Batch Chip.
Issue 4: Whether the Department should revise the surrogate value for steam.
Issue 5: Whether Fuwei Films correctly reported PET film additives in its factors of production ("FOPs").
Issue 6: Whether Fuwei Films reported all suppliers of FOPs, and all raw materials that it purchased from suppliers and consumed during the POR.
Issue 7: Whether the Department should revise its CONNUM methodology based on Fuwei Films' FOPs allocation methodology.
Issue 8: Whether the Department should make further revisions to its labor rate methodology revised after the Preliminary Results.
Issue 9: Whether the Department should revise Fuwei Films' methodology for calculating indirect selling expenses.
Issue 10: Whether the Department should have selected Wanhua as a mandatory respondent.
Issue 11: Whether the Department should revise its methodology for calculating the separate rate for respondents not specifically reviewed.

[FR Doc. 2011–3909 Filed 2–18–11; 8:45 am]

BILLING CODE 3510–DS–P

[21] *Id.*

[22] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XA233**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is

scheduling a public meeting of its Monkfish Advisory Panel meeting on March 9, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Wednesday, March 9, 2011 at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the Radisson Hotel Providence Airport, 2081 Post Road, Warwick, RI 02886; *telephone:* (401) 739–3000; *fax:* (401) 732–9309.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The New England and Mid-Atlantic Councils have declared their intent to consider catch shares management for the monkfish fishery and have held a round of scoping hearings on Amendment 6 for that purpose. At this meeting, the Advisors will review public comments and the recommendations of the Industry Advisory Panel, and develop recommendations to the Monkfish Oversight Committee and the Councils on the next steps in the process, as well as on any substantive recommendations on the range of alternatives and elements of any catch shares amendment. The Advisors will also discuss the matter of trip limit exemptions for vessels involved in cooperative research projects under the research days-at-sea set aside program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 16, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–3815 Filed 2–18–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA234**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/MPA/Ecosystem Committee in March, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Thursday, March 10, 2011 at 10 a.m.

**ADDRESSES:** This meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; *telephone:* (603) 431–2300; *fax:* (603) 433–5649.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Committee will continue to work on Omnibus EFH Amendment 2 and approve revisions to the EFH designations. They will also update on peer review of Swept Area Seabed Impact (SASI) Model as well as update on analysis concerning deep sea coral protection. Other topics may be discussed at the Chair's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: February 16, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–3816 Filed 2–18–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA236**

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee meeting on March 29, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, March 29, 2011 at 9 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; *telephone:* (603) 431–2300; *fax:* (603) 433–5649.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The New England and Mid-Atlantic Councils have declared their intent to consider catch shares management for the monkfish fishery and have held a round of scoping hearings on Amendment 6 for that purpose. At this meeting, the Committee will review public comments and the recommendations of

the Industry Advisory Panel, and develop recommendations to the Councils on the next steps in the process, as well as on any substantive recommendations on the range of alternatives and elements of any catch shares amendment. The Committee will also discuss the matter of trip limit exemptions for vessels involved in cooperative research projects under the research days-at-sea set aside program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 16, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–3817 Filed 2–18–11; 8:45 am]

**BILLING CODE 3510–22–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) consisting of four instruments entitled Request to Transfer a Segal Education Award Amount Form, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–6954 or e-mail to *bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, *Attention:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** 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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### Comments

A 60-day public comment Notice was published in the **Federal Register** on 12/8/2010. This comment period ended 2/8/2011. No public comments were received from this Notice.

*Description:* The Corporation is seeking approval of four instruments entitled Request to Transfer a Segal Education Award Amount Form, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form which is used by qualified AmeriCorps members to transfer all or a portion of their education award to those qualified to receive the award transfer, in accordance with the provisions of 42 U.S.C. 12501.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* Request to Transfer a Segal Education Award Amount Form, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Qualifying AmeriCorps members and education award transfer recipients.

*Total Respondents:* 100.

*Frequency:* Annually.

*Average Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 8.33.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: February 15, 2011.

**William Anderson,**

*Chief Financial Officer.*

[FR Doc. 2011–3793 Filed 2–18–11; 8:45 am]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### U.S. Navy Disaster Relief Survey Proposed Collection Comment Request

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Navy announces a new proposed public information collection and seeks public comment on the provisions thereof. 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 of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by April 25, 2011.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

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

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

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Assessment Division, Room BE922/OPNAV N816M, 2000 Navy Pentagon, Washington DC 20350–2000, LCDR Ryan Billington, 703–695–4891.

Dated: February 14, 2011.

**D.J. Werner,**

*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2011–3920 Filed 2–18–11; 8:45 am]

**BILLING CODE 3810–FF–P**

## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, March 2, 2011. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public and will be held at the West Trenton Volunteer Fire Company, located at 40 West Upper Ferry Road, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:45 a.m. and will consist of two presentations: report by Partnership for the Delaware Estuary's Executive Director Jennifer Adkins on PDE's climate-ready estuary project; and report by a representative of Columbia University's Columbia Earth Institute on that institution's water management and climate project.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Warren County (Pequest River) Municipal Utilities Authority, D–1971–094 CP–4.* An application for renewal of the Belvidere Wastewater Treatment Plant (WWTP). The existing 0.5 million gallon per day (mgd) WWTP will continue to discharge treated effluent to Water Quality Zone 1D of the Delaware River at River Mile 197.0. The facility is located in White Township, Warren County, New Jersey within the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

2. *Fleetwood Borough Authority, D–1987–054 CP–3.* An application to renew the approval for discharge of up to 0.7 mgd of treated effluent from existing Outfall No. 001 at the Fleetwood WWTP. The WWTP discharges to Willow Creek at River Mile 92.47–86.7–0.6–6.4 (Delaware River—Schuylkill River—Maiden Creek—Willow Creek), in Richmond Township, Berks County, Pennsylvania.

3. *Village of Monticello, D–1981–038 CP–2.* An application to approve modifications to the existing 3.1 mgd Monticello WWTP. Modifications include retrofit of three sequencing batch reactors (SBR) in the facility's two existing oxidation ditches and a stormwater retention basin; converting one of the existing clarifiers to an aerobic digester and the other to an equalization basin; and converting sludge lagoon No. 2 into reed beds. Outfall No. 001 will continue to discharge to Tannery Brook, a tributary of the Neversink River at River Mile 253.64–27.3–1.91–3.24–1.54 (Delaware River—Neversink River—Sheldrake Stream—Kiamesha Creek—Tannery Brook). The project is located within the Village of Monticello, Sullivan County, New York in the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protected Waters.

4. *Lake Adventure Community Association, D–1993–062 CP–2.* An application for approval to modify the treatment process of the existing 0.16 mgd Lake Adventure WWTP from extended aeration to a sequencing batch reactor (SBR). The WWTP will continue to discharge to an unnamed tributary of Shohola Creek at River Mile 273.2–13.25–0.91 (Delaware River—Shohola Creek—UNT), within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is classified as Special Protection Waters. The WWTP is located in Dingman Township, Pike County, Pennsylvania.

5. *Superior Water Company, D–2001–015 CP–3.* An application for approval of an existing groundwater withdrawal (GWD) project to increase an individual well allocation and continue to supply up to 36.82 million gallons per month (mgm) of water to the applicant's public water supply system from 10 existing wells. The applicant requests that the individual allocation for Well No. SWC–8 be increased from 2.2 mgm to 6.7 mgm. The current individual well allocation is below historic use and is inadequate to meet typical peak demands. The project is located in the Brunswick and Lockatong Formations in the Zacharias, Scioto, and Minister Creeks watersheds in Douglass, New Hanover, Upper Frederick, and Worcester townships in Montgomery County, Pennsylvania, within the Southeastern Pennsylvania GWPA.

6. *NuStar Asphalt Refining, LLC, D–2001–027–3.* An application for renewal of a surface water withdrawal (SWWD) project to supply up to 7.79 mgm of surface water from existing Intakes Nos. 1 and 2 for the applicant's industrial processes, heating, and fire emergency testing. Intake No. 2 was added to the facility in July 2004, a modification that was not reflected in Docket No. D–2001–027–1, the most recent Commission approval for the project. The applicant's pending application was the subject of a previous notice as Docket No. D–2003–021–2. No increase in the applicant's water allocation is proposed. The project intakes withdraw water from the tidal portion of Mantua Creek in the Mantua Creek Watershed in the Borough of Paulsboro, Gloucester County, New Jersey.

7. *Superior Tube Company, D–1996–013–2.* An application for approval of a combined surface and groundwater withdrawal project to continue to supply up to 13.4 mgm of water to the applicant's industrial facility from 11 existing wells and a surface water intake located in Perkiomen Creek. The previous docket approval expired on April 21, 2008. The project wells are located in the Brunswick Formation in Lower Providence Township, Montgomery County, Pennsylvania. The project wells and surface water intake are located in the Perkiomen—Lodal Creeks subbasin of the Southeastern Pennsylvania Ground Water Protected Area (GWPA).

8. *Dragon Springs Buddhist, Inc., D–2007–021 CP–2.* An application for approval to construct and operate the 0.0184 mgd Dragon Springs WWTP. Treated effluent from the proposed

WWTP will discharge to a subsurface leach field located near River Mile 253.64–9.5–0.4 (Delaware River—Neversink River—Basher Kill River) within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters (SPW). The WWTP will be located in the Town of Deerpark, Orange County, New York. By Docket No. D–2007–021–1 issued on September 26, 2007, DRBC approved the construction of a 0.011 mgd WWTP to discharge to an unnamed tributary of the Basher Kill River; however, that facility was never constructed.

9. *Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station D–2009–004–1.* An application for approval of an existing and proposed discharge of non-contact cooling water (NCCW) from the Naval Surface Warfare Center, Carderock Division, Ship Systems Engineering Station from two (2) existing outfalls located in Delaware River Water Quality Zone 4. The project currently discharges up to 24.0 million gallons per day (mgd) of NCCW intermittently from Outfall 001 to the Navy Reserve Basin (which is connected by a channel and tidally linked to the Schuylkill River, one-quarter mile upstream of its confluence with the Delaware River) and discharges 0.60 mgd of process water from Outfall 005 directly to the Delaware River in Water Quality Zone 4. Additional NCCW from the new P–205 Electric Drive land based test site (LBTS) is proposed to be discharged via Outfall 001. The discharge from Outfall 001 will be increased from 24.0 mgd to 36.0 mgd as a result of the project. The discharge from Outfall 005 will remain at 0.60 mgd. The project is located in the Schuylkill River Watershed in the City of Philadelphia, Philadelphia County, Pennsylvania.

10. *Blackwood Golf Course, D–2010–024–1.* An application for approval of a GWD project to supply up to 3.57 mgm of water to the applicant's golf course irrigation system from existing Wells Nos. 1 and 2. The project is located in the Brunswick Formation in the Schuylkill River Watershed in Union Township, Berks County, Pennsylvania in the Sixpenny Subbasin of the Southeastern Pennsylvania Ground Water Protected Area (GWPA).

11. *Pennsylvania American Water Company—Stony Garden, D–2010–025 CP–1.* An application for the approval of an existing 0.1679 mgd discharge of filter backwash from the Stony Garden WFP. The WFP discharges to the Delaware River at River Mile 183.66–36.32–20.7–0.06 (Delaware River—Lehigh River—Aquashicola Creek—Ross Common Creek) in Hamilton Township, Monroe County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protected Waters.

12. *Thomas & Betts Corporation, D–2010–033–1.* An application for approval of an existing 0.255 mgd discharge of NCCW and stormwater via Outfall No. 004A at the Elastimold electronic equipment plant (EEP). The Elastimold EEP is located within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters. The facility discharges to an unnamed tributary of the Musconetcong River at River Mile 174.6–27.9–0.12 (Delaware River—Musconetcong River—UNT), in Washington Township, Morris County, New Jersey.

13. *Squires Golf Course, D–2010–034–1.* An application for approval of a GWD project to supply up to 5 mgm of water to the applicant's golf course irrigation system from existing Well No. 1 and up to 5.7 mgm of water from the pond intake located in the irrigation pond. The project is located in the Stockton Formation in the Park Creek Watershed in Horsham Township, Montgomery County, Pennsylvania, within the Park Creek Subbasin of the Southeastern Pennsylvania Ground Water Protected Area (GWPA).

14. *Waste Management of Pennsylvania, D–1988–054–6.* The Delaware River Basin Commission (DRBC or Commission) approved Docket No. D–88–54–5 on July 15, 2009. In accordance with Condition II.aa. of the docket, the docket holder subsequently filed a request for a Color Determination from the Executive Director, which was issued on August 16, 2010. The docket holder timely appealed. The revised docket would update the docket compliance dates and would continue the approval to construct a new 0.3 mgd leachate treatment plant (LTP) to replace the existing 0.1 mgd LTP, relocation/reconfiguration of the associated outfall, and the total dissolved solids (TDS) determination included in Docket No. D–88–54–5. In combination with a revised color determination, the revised docket would resolve the applicant's appeal.

In addition to the standard business meeting items, consisting of adoption of the Minutes of the Commission's September 15 and December 8, 2010 business meetings, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and public dialogue, the business meeting also will include public hearings on: (a) A resolution authorizing the Executive Director to renew DRBC's 2001 cooperative agreement with Rutgers University for the collection, analysis and interpretation of ambient air samples to support the control of toxic substances in the Delaware Estuary; (b) a resolution authorizing the Executive Director to amend the Commission's 2007 agreement with the Academy of Natural Sciences for the analysis of ambient water samples from the non-tidal Delaware River for nutrients and bacteria to include parameters specific to natural gas development activities in the Delaware River Basin; (c) a resolution reauthorizing the Water Quality Advisory Committee; and (d) the Delaware River Basin Commission's proposed Fiscal Year 2012 Operating Budget. A hearing also is planned for the Lambertville Municipal Utility Authority (LMUA) to show cause why its wastewater treatment plant improvements should not be subject to review in accordance with Section 3.8 of the *Delaware River Basin Compact* and DRBC Regulations.

Draft dockets scheduled for public hearing on March 2, 2011 can be accessed through the Notice of Commission Meeting and Public Hearing on the Commission's Web site, drbc.net, ten days prior to the meeting date. Additional public records relating to the dockets may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Note that conference items are subject to change and items scheduled for hearing are occasionally postponed to allow more time for the Commission to consider them. Please check the Commission's Web site, drbc.net, closer to the meeting date for changes that may be made after the deadline for filing this notice.

Individuals who wish to comment for the record on a hearing item or to address the Commissioners informally during the public dialogue portion of the meeting are asked to sign up in advance by contacting Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.state.nj.us* or by phoning Ms. Schmitt at 609–883–9500 ext. 224.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at 609–883–9500 ext.

203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: February 15, 2011.

**Pamela M. Bush,**

*Commission Secretary.*

[FR Doc. 2011–3836 Filed 2–18–11; 8:45 am]

**BILLING CODE 6360–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before March 24, 2011.

**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 emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

**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. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the 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.

Dated: February 16, 2011.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Institute of Education Sciences

*Type of Review:* Revision

*Title of Collection:* Education Longitudinal Study (ELS) 2002 Third Follow-up 2011 Field Test

*OMB Control Number:* 1850–0652

*Agency Form Number(s):* N/A

*Frequency of Responses:* Annually

*Affected Public:* Individuals or households

*Total Estimated Number of Annual Responses:* 7,272

*Total Estimated Annual Burden Hours:* 875

*Abstract:* The Education Longitudinal Study of 2002 is a nationally representative study of two high school grade cohorts (spring 2002 tenth-graders and spring 2004 twelfth-graders) comprising over 16,000 sample members. The study focuses on achievement growth in mathematics in the high school years and its correlates, the family and school social context of secondary education, transitions from high school to postsecondary education and/or the labor market, and experiences during the postsecondary years. Major topics covered for the postsecondary years include postsecondary education access, choice, and persistence; baccalaureate and sub-baccalaureate attainment; the work experiences of the non-college-bound; and other markers of adult status such as family formation, civic participation and other young adult life course developments. Data collections took place in 2002, 2004, 2006 (two years out of high school), and now will take place in 2012, when most sample members are around 26 years of age. This submission requests OMB's approval for the third follow-up 2011 field test and a 60-day **Federal Register** waiver for the 2012 full scale clearance.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web *site at http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4460. 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 and OMB Control Number when making your request.

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. 2011–3841 Filed 2–18–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Presidential Academies for Teaching of American History and Civics; Office of Innovation and Improvement; Overview Information; Presidential Academies for Teaching of American History and Civics; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215A

*Dates:*

*Applications Available:* February 22, 2011.

*Deadline for Notice of Intent to Apply:* March 24, 2011.

*Deadline for Transmittal of Applications:* April 25, 2011.

*Deadline for Intergovernmental Review:* June 22, 2011.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* This program supports the establishment of Presidential Academies for Teaching of American History and Civics (Presidential Academies) that offer workshops for both veteran and new teachers of American history and civics to strengthen their knowledge and preparation for teaching these subjects.

*Priorities:* This competition includes one competitive preference priority and one invitational priority that are described in the following paragraphs.

*Competitive Preference Priority:* This priority is from the notice of final supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486). For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Consistent with 34 CFR 75.105(c)(2)(i), we may award up to an additional three points to an application, depending on

how well the application meets this priority. These points are in addition to any points the application earns under the selection criteria.

This priority is:

*Enabling More Data-Based Decision-Making (up to three additional points).*

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or both of the following priority areas:

(a) Improving instructional practices, policies, and student outcomes in elementary or secondary schools.

(b) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

**Note:** For purposes of this competitive preference priority, the term "privacy requirements" means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

*Invitational Priority:* For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

*Professional Development.*

Projects that provide a coherent program of professional development that—

(a) Is designed to increase the subject-matter knowledge and understanding of new and veteran teachers of American history and civics;

(b) Is aligned with the standards for American history and civics of the State in which the project is implemented or, if that State has not adopted American history or civics standards, other rigorous standards;

(c) Is implemented on a school-wide basis in one or more schools; and

(d) Contributes to improved student achievement in those schools.

*Program Authority:* American Civics and History Education Act of 2004, 20 U.S.C. 6713.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $1,805,925.

The Administration's budget request for FY 2011 does not include funds for this program. In place of this and several other, sometimes narrowly targeted, programs focused on student achievement in specific subject areas, the Administration has proposed to create, through the reauthorization of the Elementary and Secondary Education Act of 1965, a broader program, Effective Teaching and Learning for a Well-Rounded Education, that would support activities to improve student achievement and teacher effectiveness across a well-rounded curriculum that includes history and civics among other subject areas. However, we are inviting applications for the Presidential Academies program to allow enough time to complete the grant process if Congress appropriates funds for this program. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $750,000–$1,800,000.

*Estimated Number of Awards:* 1–2.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months. The Department anticipates funding the entire project period of each grant with fiscal year 2011 funds. There will be no continuation grant awards for projects funded under this competition.

## III. Eligibility Information:

1. *Eligible Applicants:* The Secretary may award grants to entities such as:

- States or local educational agencies;
- Institutions of higher education; or
- Other public and private agencies, organizations, and institutions.

Applicants must include in their applications evidence of their organization's expertise in historical methodology or the teaching of history.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

## IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

*Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent to Bonnie Carter at: *academies@ed.gov.*

Applicants that do not provide this e-mail notification may still apply for funding.

*Page Limit:* The application narrative [Part III of the application] is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is strongly suggested that you limit the application narrative to no more than 25 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the

application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the suggested page limit does apply to all of the application narrative section [Part III].

3. *Submission Dates and Times:*

*Applications Available:* February 22, 2011. *Deadline for Notice of Intent to Apply:* March 24, 2011. *Deadline for Transmittal of Applications:* April 25, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: June 22, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Presidential Academies Program, CFDA Number 84.215A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Presidential Academies Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.215, not 84.215A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the

application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at under News and Events on the Department's G5 system home page at *http://www.G5.gov.*

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department). The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Bonnie Carter, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W107, Washington, DC 20202–5960. FAX: (202) 401–8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 in EDGAR and are as follows:

(1) Quality of the Project Design (30 Points). The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(a) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(b) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(c) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(2) Quality of Project Services (30 Points). The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(a) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(b) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(c) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(3) Quality of the Management Plan (20 Points). The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities. timelines, and milestones for accomplishing project tasks.

(b) The adequacy of mechanisms for ensuring high-quality products and services for the proposed project.

(4) Quality of the Project Evaluation (20 Points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(a) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* We have established one indicator and one performance measure for the Academies Program. They are:

*Indicator:* Teachers will demonstrate through pre- and post-assessments an increased understanding of American history and civics that can be directly linked to their participation in the Presidential Academy.

*Measure:* The average percentage gain on a teacher assessment after participation in the Presidential Academy.

### VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Bonnie Carter, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W107, Washington, DC 20202–5960. *Telephone:* (202) 401–3576 or by *e-mail: academies@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

### VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

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

Dated: February 16, 2011.

**James H. Shelton III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2011–3913 Filed 2–18–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### National Coal Council

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the National Coal Council (NCC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Friday, March 18, 2011 9 a.m. to 12 p.m.

**ADDRESSES:** Westin Georgetown, 2350 M Street, NW., Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Ducker, U.S. Department of Energy; 4G–036/Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; *Telephone:* (202) 586–7810.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To conduct an open meeting of the NCC and to provide a presentation on the new study conducted by the Council on the deployment of carbon capture and storage technologies.

*Agenda:*

- Welcome and call to order by NCC Chair Joe Hopf.
- Remarks by Secretary Steven Chu, Department of Energy.
- Council Business:
  - Finance report by Committee Chairman Joe Hopf.
- Presentation by Coal Policy Committee Chairman Frank Blake on the findings and recommendations in the new NCC Report.
- Presentation by Mike Howard, President and CEO of Electric Power Research Institute (EPRI).
- Presentation by Tom Grahame of the Department of Energy on the impacts of black carbon in the atmosphere.
- Other Business.
- Adjourn.

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any potential items on the agenda, you should contact Michael J. Ducker by telephone at (202) 586–7810 or *Michael.Ducker@HQ.DOE.GOV* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The NCC will prepare meeting minutes within 45 days of the meeting. The minutes will be posted on the NCC Web site at *http://www.nationalcoalcouncil.org/.*

Issued at Washington, DC, on February 15, 2011.

**LaTanya Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–3847 Filed 2–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Advanced Scientific Computing Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, March 22, 2011—9 a.m.–5 p.m. and Wednesday, March 23, 2011—9 a.m.–12 p.m.

**ADDRESSES:** American Geophysical Union (AGU), 2000 Florida Avenue, NW., Washington, DC 20009–1277.

**FOR FURTHER INFORMATION CONTACT:** Melea Baker, Office of Advanced Scientific Computing Research, SC–21/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone (301) 903–7486.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of this meeting is to provide advice on a continuing basis to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

### Tentative Agenda Topics

- Advanced Scientific Computing Research program updates.
- ARRA update.
- Technical talks on exascale relevant research.
- ASCAC Committee of Visitors (COV) update and new business.
- Public Comment (10-minute rule).

*Public Participation:* The meeting is open to the public. A webcast of this meeting may be available. Please check the ASCAC Web site below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker at (301) 903–7486 or *e-mail: Melea.Baker@science.doe.gov.* You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public

comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for viewing on the U.S. Department of Energy's Office of Advanced Scientific Computing Web site at: *http://www.er.doe.gov/ascr/ASCAC/ASCAC.html.*

Issued at Washington, DC on February 15, 2011.

**LaTanya Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–3848 Filed 2–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Nationwide Limited Public Interest Waiver Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of extension of limited waiver.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a six-month extension of the amended nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of section 1605(b)(1) (amended public interest waiver), with respect to the following solar photo-voltaic (PV) equipment: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells until August 6, 2011. This waiver expires August 6, 2011 (six months from the date of expiration of the original waiver). Recipients of EERE Recovery Act funds who have taken substantial steps to commit funds for the purchase of the items covered in this waiver by August 6, 2011 will not be impacted by the expiration of this waiver.

**DATES:** Effective Date February 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Recovery Act Buy American Coordinator, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, *buyamerican@ee.doe.gov,* Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:**

Under the authority of the Recovery Act, section 1605(b)(1), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provisions) if the application of section 1605 would be inconsistent with the public interest. On September 17, 2010, the Secretary of Energy re-delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy, for EERE Recovery Act projects.

Pursuant to this delegation, the Assistant Secretary has determined that application of section 1605 restrictions would be inconsistent with the public interest for incidental and/or ancillary solar Photovoltaic (PV) equipment, when this equipment is utilized in solar installations containing domestically manufactured PV cells or modules (panels).

This extension of the amended public interest determination extends the amended waiver of the Buy American requirements in EERE-funded Recovery Act projects for the purchase of the following solar PV equipment: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells.

This waiver expires August 6, 2011 (six months from the date of expiration of the original waiver). Recipients of EERE Recovery Act funds who have taken substantial steps to commit funds for the purchase of the items covered in this waiver by August 6, 2011 will not be impacted by the expiration of this waiver.

*Definitions*—Solar *cells* are the basic building block of PV technologies. The cells are functional semiconductors, made by processing and treating crystalline silicon or other photo-sensitive materials to create a layered product that generates electricity by absorbing light photons. The individual cells are cut and/or assembled into larger groups known as *panels* or *modules.* These two terms are synonymous and used interchangeably in this memorandum. The panel is the end product, and consists of a series of solar cells, a backing surface, and a covering to protect the cells from weather and other types of damage. A solar *array* is created by installing multiple modules in the same location to increase the electrical generating capacity. Operational solar PV modules and arrays use cells to capture and transfer solar-generated electricity.

The Buy American provisions contain no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States [2 CFR 176.70(a)(2)(ii)]. However, determining where final manufacturing occurs in the context of the solar production chain is complicated. Under a plain reading of the Recovery Act Buy American provisions, only the PV modules would need to be manufactured in the United States, but the source of the component parts—including the high-value cells—would not be relevant to complying with the Buy American requirements.

EERE and the National Renewable Energy Laboratory have conducted extensive research into the nature of the domestic solar manufacturing industry to determine the best way to apply the Buy American requirements to solar PV projects. EERE considered three basic options: (1) To follow a plain reading of the Buy American provisions and require that only the modules be produced in the United States, irrespective of the origin of the cells contained in the modules; (2) determine that the modules and cells are distinct manufactured goods and thus both must be produced in the United States; and (3) choose a more inclusive approach that allows a solar installation to comply if either the cells or the modules are manufactured in the United States.

Of the options considered, only option (3) recognized EERE's determination that the manufacture of PV cells and modules represent distinct instances of "substantial transformation" along the solar PV manufacturing chain, and that the public interest is best

served by allowing either instance of substantial transformation to qualify the final solar installation or array as compliant with the Buy American provisions.

Conducting either of these discrete activities (production of the cells or the modules) in the United States creates roughly equal numbers of American jobs, and aligns squarely with purpose and the principles the Recovery Act Buy American provision by focusing on the highest-value and most labor-intensive processes along the solar PV manufacturing chain.

The extension of the Solar Public Interest Waiver also demonstrates EERE's commitment to the continued swift expenditure of Recovery Act funds, by permitting grantees to utilize a diverse range of existing American-manufactured solar technologies. This is a one-time extension encouraging grantees to complete their projects in an expedient manner; strengthening local clean energy infrastructure while leveraging Recovery Act dollars to support U.S. jobs along the solar manufacturing supply chain and in high-skill solar installation activities.

For all the reasons outlined above, the Assistant Secretary of EERE has determined it is in the public interest to issue a one-time extension of the Solar Public Interest Waiver of the Recovery Act Buy American provisions, permitting EERE Recovery Act grantees to utilize solar PV installations where either the cell or the module is manufactured in the United States.

In addition, this extended public interest determination waives the Buy American requirements for all ancillary items that are incidental in cost and technological significance, thus eliminating ambiguities concerning whether the incidental items are final manufactured goods or merely components of a larger solar module, installation or array. These items include, but are not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, and cables. Inverters and batteries remain subject to the Buy American provisions. This helps support the solar installation industry, because it removes the burden from businesses—especially small businesses—of verifying the origin of each of the many minor components of a solar installation or array. This also benefits grantees, businesses, American taxpayers and the Department of Energy by encouraging more competitive bids on solar projects.

Issuance of this nationwide public interest waiver recognizes EERE's commitment to expeditious costing of Recovery Act dollars by enabling recipients to easily ascertain whether a given solar installation complies with the Buy American provision. Simultaneously, this waiver advances the purpose and the principles of the Buy American provision by focusing on the highest-value and most labor-intensive pieces of solar PV equipment.

In light of the foregoing, and under the authority of section 1605(b)(1) of Public Law 111–5 and the Redelegation Order, dated September 17, 2010, with respect to Recovery Act projects funded by EERE, the Assistant Secretary on February 4, 2011 issued an extension of the amended "determination of inapplicability" (a waiver under the Recovery Act Buy American provisions) for the following items: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells until August 6, 2011.

This waiver expires August 6, 2011 (six months from the date of expiration of the original waiver). Recipients of EERE Recovery Act funds who have taken substantial steps to commit funds for the purchase of the items covered in this waiver by August 6, 2011 will not be impacted by the expiration of this waiver.

Furthermore, the Assistant Secretary reserves the right to revisit and amend this determination based on new information or new developments.

**Authority:** Pub. L. 111–5, section 1605.

Issued in Washington, DC, on February 4, 2011.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

[FR Doc. 2011–3849 Filed 2–18–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of limited waivers.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(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) with respect to (1) two-stage, steam heated absorption chillers rated at 500–1,500 tons; (2) single wall evacuated tube collectors for solar thermal systems (when used in an educational context for the purposes of comparing relative efficiency of solar thermal technologies); (3) 2-ton adsorption chillers (for educational purposes, or where alternative technologies are not serviceable); (4) LED Lamp and controller for studio lights in a television broadcast studio (where a CRI (Color Rendition Index) sufficient to render accurate flesh tones and natural colors and a precise color tuning control to dial in exact color temperature for accurate colors under multiple lighting setups are required); (5) Global Positioning System (GPS) Time Source Modules (to serve as direct communication link between a county or city's Traffic Management System (TMS) and the Caltrans Traffic Signal Management and Surveillance System (CTNET)); and (6) elongated wall-hung rear spud toilets (bowl and hardware) that will be used on eligible EERE Recovery Act-funded projects.

**DATES:** *Effective Date:* January 12, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Recovery Act, Public Law 111–5, section 1605(b)(2), the head of a federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy

American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality ("nonavailability"). On September 17, 2010, the authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that (1) two-stage, steam heated absorption chillers rated at 500–1500 tons; (2) single wall evacuated tube collectors for solar thermal systems (when used in an educational context for the purposes of comparing relative efficiency of solar thermal technologies); (3) 2-ton adsorption chillers (for educational purposes, or where alternative technologies are not serviceable); (4) LED Lamp and controller for studio lights in a television broadcast studio (where a CRI (Color Rendition Index) sufficient to render accurate flesh tones and natural colors and a precise color tuning control to dial in exact color temperature for accurate colors under multiple lighting setups are required); (5) Global Positioning System (GPS) Time Source Modules (to serve as direct communication link between a county or city's Traffic Management System (TMS) and the Caltrans Traffic Signal Management and Surveillance System (CTNET)); and (6) elongated wall-hung rear spud toilets (bowl and hardware) that will be used on eligible EERE Recovery Act-funded projects qualify for the "nonavailability" waiver determination.

EERE has developed a rigorous process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determination.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to "scout" for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the six products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for the exact items needed to meet the product specifications required by the EERE grant recipient.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts, including utilizing technology experts employed by the Department of Energy or the Department of Energy's National Renewable Energy Laboratory. EERE's research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the numerous inquiries to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers have been unsuccessful.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on January 12, 2011, six nationwide categorical waivers of section 1605 of the Recovery Act were issued as detailed *supra.* This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

**Authority:** Pub. L. 111–5, section 1605.

Issued in Washington, DC on January 19, 2011.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

[FR Doc. 2011–3850 Filed 2–18–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 637–022]**

### Public Utility District No. 1 Chelan County; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 637–022.

c. *Date Filed:* January 21, 2011.

d. *Applicant:* Public Utility District No. 1 Chelan County.

e. *Name of Project:* Lake Chelan Hydroelectric Project.

f. *Location:* The project is located on the Chelan River in Chelan County near the City of Chelan, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Michele Smith, Licensing and Compliance Manager at P.O. Box 1231, Wenatchee, Washington. Phone: (509) 663–8121.

i. *FERC Contact:* Patricia Grant at (312) 596–4435; e-mail: *patricia.grant@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–637–022) on any comments, motions, or recommendations filed.

k. *Description of the Application:* Public Utility District No. 1 Chelan County has filed a request for Commission approval to authorize Grandview on the Lake (formerly known as the Caravel Resort) to construct a new 17-slip marina on the lower tip of Lake Chelan within the project boundary.

l. *Location of the Application:* This filing is available for review at the Commission 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. 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 at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (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. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). 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. If an intervener 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: February 14, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–3807 Filed 2–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 618–191]**

### Alabama Power Company; Notice of Application Accepted for Filing, and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project Nos.:* 618–191.

c. *Date Filed:* February 10, 2011.

d. *Applicants:* Alabama Power Company.

e. *Name of Projects:* Jordan Dam Hydroelectric Project.

f. *Location:* On the Coosa River, in Elmore, Chilton, and Coosa Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Barry Lovett, Alabama Power Company, 600 18th Street North, Birmingham, AL 35203–8180, (205) 257–1268.

i. *FERC Contact:* Mr. Jeremy Jessup, (202) 502–6779, *Jeremy.Jessup@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 15 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 at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–618–191) on any comments, motions, or recommendations filed.

k. *Description of Request:* Alabama Power Company (APC) is requesting a temporary variance of the Jordan Dam Project's operation relating to minimum flow requirements due to anticipated drought conditions in the southeast, and to ensure, to the extent possible, that there will be sufficient water available in the Coosa River to support both reservoir and downstream environmental, municipal and industrial water supply and navigation needs. APC is requesting a variance to release from Jordan Dam no less than a continuous flow of 2,000 cfs, ± 5 percent, from the issuance date of an order by the Commission through December 31, 2011. The licensee indicates that, in 2011, it would be its intent to provide flows as close to normal operation as possible, while maintaining flexibility to adjust to changing drought conditions. Any adjustments that involve a reduction in flows from Jordan Dam will be achieved by ramping down the flows at an acceptable rate until the new target flow is achieved. The licensee is also proposing to facilitate conference calls with the resource agencies to discuss project flow releases and operations and to address drought-related issues. APC would also provide appropriate notice to the public of periods in which flows below the dam may be modified.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/*

*esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (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. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. 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. If an intervener 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: February 15, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–3886 Filed 2–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 12966–002]**

## Utah Board of Water Resources Notice of Successive Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 1, 2011, the Utah Board of Water Resources filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lake Powell Pipeline Project (project) to be located on Lake Powell, the Colorado River and Sand Hollow reservoir, in Kane, Washington, and Iron Counties, Utah, and Coconino and Mohave Counties, Arizona. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed pipeline project would consist of building and operating 139 miles of 69-inch-diameter pipeline and penstock; 35 miles of 48- to 30-inch-diameter pipeline; 6 miles of 24-inch-diameter pipeline; a combined conventional peaking and pumped storage hydro station; five conventional in-line hydro stations; and transmission lines on federal, state, and private lands in Kane, Washington, and Iron counties, Utah, and in Coconino and Mohave Counties, Arizona.

Starting at Lake Powell, a water intake would convey water from the Bureau of Reclamation's Lake Powell up to a high point within the Grand Staircase-Escalante National Monument. From there, the water would go through a series of hydroelectric turbines, ending at Sand Hollow reservoir, near St. George, Utah. To serve Iron County, the project includes another pipeline, the Cedar Valley Pipeline System, from the Hurricane Cliffs afterbay reservoir to Cedar Valley in Iron County, Utah.

The applicant proposes to study the generating capacity and energy storage options into the development phase and these will need to be optimized to best suit the physical site and electrical system conditions. At present, the following energy generation components are being studied: (1) An inline single unit, 1-megawatt (MW) facility at Hydro Station 1 in the Grand Staircase-Escalante National Monument; (2) an inline single unit, 1.7–MW facility at Hydro Station 2 east of Colorado City, Arizona; (3) an inline single unit, 1–MW facility in Hildale City, Utah; (4) an inline single unit, 1.7–MW facility above the Hurricane Cliffs forebay reservoir; (5) a 2-unit, 300–MW (150 MW each unit) hydroelectric pumped storage development at Hurricane Cliffs, with the forebay and afterbay sized to provide ten hours of continuous 300–MW output; (6) a single unit, 35–MW conventional energy recovery generation unit built within the Hurricane Cliffs development; and (7) a single unit, 5–MW facility at the existing Sand Hollow reservoir.

*Applicant Contact:* Mr. Eric Millis, Utah Board of Water Resources, 1594 W. North Temple, Salt Lake City, UT 84116, phone (801) 528–7250, and John H. Clements, Van Ness Feldman, 1050 Jefferson Street NW., Washington, DC 20007–3877, phone (202) 298–1800.

*FERC Contact:* Jim Fargo; *phone:* (202) 502–6095.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12966–002) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 15, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–3884 Filed 2–18–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[EG11–8–000, EG11–9–000, EG11–10–000, et al.]**

### Notice of Effectiveness of Exempt Wholesale Generator Status

| | Docket No. |
|---|---|
| Cedar Creek II, LLC | EG11–8–000 |
| PSEG New Haven LLC | EG11–9–000 |
| AES Laurel Mountain, LLC | EG11–10–000 |
| Community Wind North, LLC | EG11–11–000 |
| Community Wind North 1 LLC | EG11–12–000 |
| Community Wind North 2 LLC | EG11–13–000 |
| Community Wind North 3 LLC | EG11–14–000 |
| Community Wind North 5 LLC | EG11–15–000 |
| Community Wind North 6 LLC | EG11–16–000 |
| Community Wind North 7 LLC | EG11–17–000 |
| Community Wind North 8 LLC | EG11–18–000 |
| Community Wind North 9 LLC | EG11–19–000 |
| Community Wind North 10 LLC | EG11–20–000 |
| Community Wind North 11 LLC | EG11–21–000 |
| Community Wind North 13 LLC | EG11–22–000 |
| Community Wind North 15 LLC | EG11–23–000 |
| Duke Energy Fayette II, LLC | EG11–24–000 |
| Duke Energy Hanging Rock II, LLC | EG11–25–000 |
| Duke Energy Lee II, LLC | EG11–26–000 |
| Duke Energy Vermillion II, LLC | EG11–27–000 |
| Duke Energy Washington II, LLC | EG11–28–000 |
| Snowflake Power, LLC | EG11–29–000 |
| Evergreen Wind Power III, LLC | EG11–30–000 |
| Paradise Solar Urban Renewal, LLC | EG11–31–000 |
| Red Mesa Wind, LLC | EG11–32–000 |
| Covanta Burnaby Renewable Energy, Inc | FC11–1–000 |
| Starwood Solar V, LLC | FC11–2–000 |

Take notice that during the month of January 2011, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: February 14, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–3810 Filed 2–18–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EF11–5–000]**

### Western Area Power Administration; Notice of Filing

Take notice that on February 7, 2011, the Western Area Power Administration submitted a notice of complete cancellation of its baseline tariff filed on September 30, 2010, to be effective February 4, 2011.

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 on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 22, 2011.

Dated: February 14, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–3808 Filed 2–18–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. OR96–2–018; IS98–1–006; Docket Nos. OR92–8–033; OR93–5–020; OR94–4–021; Docket No. IS06–215–003; Docket No. IS06–220–002]**

### SFPP, L.P.; SFPP, L.P.; SFPP, L.P.; SFPP, L.P.; Notice of Filing

Take notice that on February 10, 2011, the SFPP, L.P. filed with the Commission a proposal to provide refunds to shippers who were not litigants in the captioned dockets, Such shippers may be entitled to refunds pursuant to the Commission's orders dated December 8, 2006 (*SFPP, L.P.,* 117 FERC ¶ 61, 285 (2007)), December 26, 2007 (*SFPP, L.P.,* 121 FERC ¶ 61,240 (2007)), and February 5, 2008 (*SFPP, L.P.,* 122 FERC ¶ 61,133 (2008)). SFPP states that the cited orders may have modified the refund amounts due shippers under prior orders in the captioned dockets, and that those shippers may in fact owe SFPP sums that it is entitled to recoup from those shippers. To assure that it recovers the sums due it, SFPP proposes to set aside as a reserve 29.74 percent of the total additional refunds it had determined are due certain shippers that did not participate in the litigation in the cited dockets. Thus the total amount refunds remaining due could be reduced by sums still due SFPP, but which it fails to collect within 180 days after a Commission order issues. Because the proposal it a part of an uncontested settlement, the Commission will shorten the comment period to 10 calendar days, or Friday, February 25, 2011. Portions of the filing are confidential and shippers concerned with potential impact on their refunds should contact SFPP directly by calling Charles

Caldwell, Esq., a lawyer at Vinson and Elkins, First City Tower, 1001 Fannin Street, Suite 2500, Houston, TX 77002–6760, telephone number 713 758–4518.

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 on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on February 25, 2011.

Dated: February 15, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–3885 Filed 2–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP11–71–000]**

### Dominion Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on January 28, 2011, Dominion Transmission, Inc. (DTI) filed a Prior Notice Request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, and Dominion's blanket certificate for authorization to construct, install, own, operate and maintain three sections of a pipeline (TL–400) located in Fairfield County, Ohio. Specifically, DTI proposes to replace an existing 26-inch diameter pipe with three separate sections totaling approximately 11,745 feet in length, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Prior Notice should be directed to Amanda Prestage, Regulatory and Certificates Analyst III, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone No. (804) 771–4416, facsimile No. (804) 771–4804 and E-mail: *Amanda.K.Prestage@dom.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Dated: February 14, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–3809 Filed 2–18–11; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R09–RCRA–2011–0103; FRL–9269–3]**

### Adequacy of Arizona Municipal Solid Waste Landfill Permit Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Tentative Determination of Adequacy and Opportunity to Comment.

**SUMMARY:** The Environmental Protection Agency Region IX is proposing to approve a modification to Arizona's municipal solid waste landfill (MSWLF) permit program to allow the State to issue research, development, and demonstration (RD&D) permits for new and existing MSWLF units and lateral expansions. The modification will allow the Director of the approved State program to provide a variance from certain MSWLF criteria, provided that the MSWLF owner/operator demonstrates that compliance with the RD&D permit will not increase risk to human health and the environment. The Director may provide a variance from existing requirements of MSWLF criteria for run-on control systems, liquids restrictions, and final cover. EPA is seeking public comment on its tentative determination of adequacy of Arizona's RD&D modification to its MSWLF permit program.

**DATES:** Comments must be received on or before April 25, 2011. If sufficient public interest is expressed, EPA will hold a public hearing on April 25, 2011 at 4 p.m. in Room 145, Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona. If by April 11, 2011, EPA does not receive sufficient public interest for a public hearing, EPA may cancel the public hearing with no further notice. If

you are interested in attending the public hearing, contact Karen Ueno at (415) 972–3317 to verify that a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–RCRA–2011–0103 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ueno.karen@epa.gov.*
- *Fax:* (415) 947–3530.
- *Mail:* Karen Ueno (WST–7), Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.
- *Hand Delivery:* Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R09–RCRA–2011–0103. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as the State's prior applications for MSWLF permit program approval, are 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 IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. This Docket facility is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. It is located in a secured building. To review docket materials at the Docket facility, it is recommended that the public make an appointment by calling the Docket facility at (415) 947–4406 during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Karen Ueno, Waste Management Division, WST–7, Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; *telephone number:* (415) 972–3317; *fax number:* (415) 947–3530; *e-mail address: ueno.karen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Background*

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria at 40 CFR 258.4 to allow for RD&D permits. (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time. Specifically, the rule allows the Director of an approved State to issue a time-limited RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to use innovative and new methods which vary from either or both of the following: (1) The run-on control systems at 40 CFR 258.26, and/or (2) the liquids restrictions at 40 CFR 258.28(a), provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm depth of leachate on the liner. The rule also allows the Director of an approved State to issue a time-limited RD&D permit for which the owner or operator proposes to use innovative and new methods that vary from the final cover criteria at 40 CFR 258.60(a)(1) and (2), and (b)(1), provided that the owner or operator demonstrates that the alternative cover system will not contaminate groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm. An RD&D permit cannot exceed three years and a renewal of an RD&D permit cannot exceed three years. Although multiple renewals of an RD&D permit can be issued, the total term for an RD&D permit including renewals cannot exceed twelve years.

RD&D permits are only available in States with approved MSWLF permit programs that have been modified to incorporate the RD&D permit authority. Although a State is not required to seek approval for the RD&D permit provision, a State must obtain EPA approval before it may issue such a permit. Requirements for State program determination of adequacy and approval procedures are contained in 40 CFR Part 239.

In 1994, EPA Region IX approved the State of Arizona's municipal solid waste landfill (MSWLF) permit program pursuant to Subtitle D of the Federal Resource Conservation and Recovery Act (RCRA). With its application, dated June 28, 2010, as updated on January 26, 2011, the State of Arizona is seeking EPA approval for a modification to the State's existing MSWLF permit program to include RD&D permits.

## II. EPA's Action

### *A. Tentative Determination*

After completing a thorough review, EPA is proposing to tentatively approve Arizona's RD&D permit program modification. Arizona has lawfully promulgated and fully enacted regulations for the RD&D permit program, and these regulations are adequate to ensure compliance with the Federal criteria at 40 CFR 258.4. In conformance with the Federal regulations, and in addition to Arizona-specific requirements, an owner or operator is required to maintain less than a 30-cm depth of leachate on liner and demonstrate that compliance with the RD&D permit will not increase risk to human heath and the environment over compliance with a standard MSWLF permit.

Following the close of the public comment period and in consideration of comments received, EPA will issue a final determination. If approved, Arizona will be able to issue variances for run-on control systems, liquid restrictions, and final cover criteria to allow for innovative and new methods, such as bioreactor landfills.

### *B. Submitting Comments on EPA's Tentative Determination*

*Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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

*Docket Copying Costs.* Copying arrangements will be made through the Docket facility and billed directly to the recipient. Copying costs may be waived depending on the total number of pages copied.

**Authority:** Sections 2002, 4005, and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, and 6949(a). Delegation 8–46. State/Tribal Permit Programs for Municipal Solid Waste Landfills.

Dated: February 11, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–3866 Filed 2–18–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2007–0201; FRL–9269–1]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Listing of Fish Advisories (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 24, 2011.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OW–2007–0201, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** LCDR Samantha Fontenelle, Standards and Health Protection Division, Office of Science and Technology, (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–2083; *fax number:* 202–566–0409; *e-mail address: fontenelle.samantha@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 25, 2010 (75 FR 65478), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2007–0201, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* National Listing of Fish Advisories (Renewal).

*ICR numbers:* EPA ICR No. 1959.04, OMB Control No. 2040–0226.

*ICR Status:* This ICR is scheduled to expire on February 28, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The National Listing of Fish Advisories (NLFA) Database contains information on the number of advisories issued by each state, territory, or tribe annually. The advisory information collected identifies the waterbody under advisory, the fish or shellfish species

and size ranges included in the advisory, the chemical contaminants and residue levels causing the advisory to be issued, the waterbody type (river, lake, estuary, coastal waters), and the target populations to whom the advisory is directed. This information is collected under the authority of section 104 of the Clean Water Act, which provides for the collection of information to be used to protect human health and the environment. The results of the survey are shared with states, territories, tribes, other federal agencies, and the general public through the NLFA database and the distribution of biennial fish advisory fact sheets. The responses to the survey are voluntary and the information requested is part of the state public record associated with the advisories. No confidential business information is requested.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 36 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* State, territorial and tribal health departments and environmental protection agencies.

*Estimated Number of Respondents:* 92.

*Frequency of Response:* Annual.

*Estimated Total Annual Hour Burden:* 3,336.

*Estimated Total Annual Cost:* $125,697, includes $125,177 labor and $520 annualized O&M costs. No capital or startup costs are required.

*Changes in the Estimates:* There is a decrease of 229 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects a change in how the States, Tribes and territories provide the fish advisory data to EPA. The data tool is no longer being used by States to enter data into the NLFA database.

Dated: February 14, 2011.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–3870 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2010–0376; FRL–9268–9]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; The Consolidated Air Rule (CAR) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted, below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 24, 2011.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0376, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Marshall, Jr., Office of Enforcement Compliance Assurance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *e-mail address: marshall.robert@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010, (75 FR 30813) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0376, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. **Please note** that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* The Consolidated Air Rule (CAR) for the Synthetic Organic Chemical Manufacturing Industry (SOCMI) (Renewal).

*ICR Numbers:* EPA ICR Number 1854.07, OMB Control Number 2060–0443.

*ICR Status:* This ICR is scheduled to expire on February 28, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or

form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The Synthetic Organic Chemical Manufacturing Industry (SOCMI) is regulated by the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes or additions to the Provisions specified at 40 CFR part 60, subparts Ka, Kb, VV, VVa, DDD, III, NNN, and RRR. The affected entities are also subject to the General Provisions of the NESHAP at 40 CFR part 61, subpart A, and any changes or additions to the Provisions specified at 40 CFR part 61, subparts BB, Y, and V. The affected entities are also subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes or additions to the Provisions specified at 40 CFR part 63, subparts F, G, H, and I. As an alternative, SOCMI sources may choose to comply with the above standards under the Consolidated Air Rule (CAR) at 40 CFR part 65, as promulgated on December 14, 2000.

Synthetic organic chemical manufacturing facilities subject to NSPS requirements must notify EPA of construction, modification, startups, shutdowns, date and results of initial performance test and excess emissions. Semiannual reports are also required.

Synthetic organic chemical manufacturing facilities subject to NESHAP requirements must submit one-time-only reports of any physical or operational changes and the results of initial performance tests. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Periodic reports are also required, at a minimum, semiannually. Under the CAR requirements, periodic but less burdensome reporting is required.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 200 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners or operators of synthetic organic chemical manufacturing facilities.

*Estimated Number of Respondents:* 3,311.

*Frequency of Response:* Initially, occasionally, semiannually and annually.

*Estimated Total Annual Hour Burden:* 1,988,952.

*Estimated Total Annual Cost:* $283,462,406, which includes $188,133,406 in labor costs, $3,373,000 in capital/startup costs, and $91,956,000 in operation and maintenance (O&M) costs.

*Changes in the Estimates:* There is an increase of 43 burden hours from the most recently approved ICR due to adjustments. These adjustments result from the revisions to the CAR in the Direct Final Rule, the retention of decimal places during intermediate calculations, and correction of a calculation error in the burden estimates for subpart VVa in the most recent approved ICR. Additionally, there is an increase in both respondent and Agency costs resulting from labor rate adjustments from the year 2006 to the most recently available rates. The increases in Agency cost is a result of direct labor rate increases in the managerial, technical, and clerical labor categories. The increase in respondent cost is a result of direct labor rate increases in the technical and clerical labor categories.

Dated: February 14, 2011.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–3871 Filed 2–18–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2007–0069; FRL–9269–2]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; The SunWise Program (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 24, 2011.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA HQ–OAR–2007–0069, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Luke Hall-Jordan, Stratospheric Protection Division, Office of Air and Radiation, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9591; *fax number:* (202) 343–2338; *e-mail address: hall-jordan.luke@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 3, 2010 (75 FR 54143), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment. Since EPA coordinates with other federal and non-federal entities working to prevent skin cancer and other health effects from overexposure to the sun, and both Congress and EPA allocate funding for the program, no further justification for the comment is needed. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–0069, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave.,

NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. **Please note** that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

*Title:* The SunWise Program (Renewal).

*ICR numbers:* EPA ICR No. 1904.06, OMB Control No. 2060–0439.

*ICR Status:* This ICR is scheduled to expire on 2/28/2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* The goal of the SunWise School Program is to teach children and their caregivers how to protect themselves from overexposure to the sun. The SunWise Program recognizes the challenge of measuring the progress and evaluating the effectiveness of an environmental and public health education program where the ultimate goal is to reduce risk and improve public health. Therefore, the continual and careful evaluation of program effectiveness through a variety of means, including data from pre- and post-intervention surveys, tracking and monitoring of classroom activities and school policies, and consultation with experts, is necessary to monitor progress and refine the program. Surveys to be developed and administered include: (1) Teacher questionnaire for measuring their and their students' receptivity to the educational component of the Program; (2) Teacher individual interview component soliciting more information about the program and the development of a recognition and incentives program; (3) *Don't Fry Day* pledge asking educators to pledge to incorporate sun safety into their spring and summer activities; (4) Online interactive SunWise Sun Safety Certification Program enabling students, adults, organizations, and employers to develop credentials on sun safety awareness and behaviors; and (5) Partner pilot questionnaire for measuring their and their audience's receptivity to the educational component of the Program. The data will be analyzed and results will indicate the Program's effect on participants' sun-protection attitudes and behaviors, and will help guide the program's further improvement. Additionally, information is collected when educators sign up to receive a Tool Kit either on the Web or in person, and when individuals participate in an on-line sun safety tutorial/certification program. Responses to the collection of information are voluntary. All responses to the collection of information remain confidential, and where appropriate anonymous.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average less than one hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Elementary and middle school students, parents, and educators.

*Estimated Number of Respondents:* 8,960.

*Frequency of Response:* annual.

*Estimated Total Annual Hour Burden:* 1,615 hours.

*Estimated Total Annual Cost:* $100,172, which includes no annualized capital or O&M costs.

*Changes in the Estimates:* There is a decrease of 195 hours annually in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. More hours were added for teachers participating in an individual interview. Hours were subtracted for teachers administering the student survey. Hours were added for teachers participating in the *Don't Fry Day* pledge. Hours and burden for educators is about the same; hours for students has also decreased significantly. The bottom line burden hours increased along with the total cost.

Dated: February 14, 2011.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2011–3869 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2007–1196; FRL–9269–5]**

## Recent Postings of Broadly Applicable Alternative Test Methods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the broadly applicable alternative test method approval decisions that EPA has made under and in support of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) in 2010.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, contact Lula H. Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* 919–541–2910; *fax number:* 919–541–0516; *e-mail address: melton.lula@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval documents.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this notice apply to me?*

This notice will be of interest to entities regulated under 40 Code of Federal Regulations(CFR) parts 60, 61, and 63; State, local and Tribal agencies; and EPA Regional Offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

*B. How can I get copies of this information?*

Copies of the broadly applicable alternative test method approval documents are available from EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html.*

## II. Background

Broadly applicable alternative test method approval decisions made by EPA in 2010 under the NSPS, 40 CFR part 60 and the NESHAP, 40 CFR parts 61 and 63 are identified in this notice (*see* Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods subject to their specific applicability. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

As explained in a previous **Federal Register** notice published at 72 FR 4257 (January 30, 2007) and found on EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html,* the EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). In the past, we have performed thorough technical reviews of numerous requests for alternatives and modifications to test methods and procedures. Based on these experiences, we have often found that these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category or subcategory. Consequently, we have concluded that, where a method modification or an alternative method is clearly broadly applicable to a class, category or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time.

It is important to clarify that alternative methods are not mandatory but permissive. Sources are not required to employ such a method but may choose to do so in appropriate cases. Source owners or operators should review the specific broadly applicable alternative method approval decision on EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* before electing to employ it. As per 63.7(f)(5), by electing to use an alternative method for 40 CFR part 63 standards, the source owner or operator must use the alternative method until approved otherwise.

The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are outlined at 72 FR 4257 (January 30, 2007). We will continue to announce approvals for broadly applicable alternative test methods on EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* and annually publish a notice that summarizes approvals for broadly applicable alternative test methods.

This notice comprises a summary of sixteen such approval documents added to our technology transfer network from January 1, 2010, through December 31, 2010. The alternative method decision letter or memo number, the reference method affected, sources allowed to use this alternative, and the modification or alternative method allowed are summarized in Table 1 of this notice. Please refer to the complete copies of these approval documents available from EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* as the table serves only as a brief summary of the broadly applicable alternative test methods. If you are aware of reasons why a particular alternative test method approval that we issue should not be broadly applicable, we request that you make us aware of the reasons in writing and we will revisit the broad approval. Any objection to a broadly applicable alternative test method, as well as the resolution of that objection, will be announced on EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* and in the subsequent **Federal Register** notice. If we should decide to retract a broadly applicable test method, we would continue to grant case-by-case approvals, as appropriate, and would (as States, local and Tribal agencies and EPA Regional Offices should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: February 15, 2011.

**Mary Henigin,**

*Acting Director, Office of Air Quality Planning and Standards.*

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 MADE BETWEEN JANUARY 2010 AND DECEMBER 2010

| Alternative method decision letter/memo No. | As an alternative or modification to . . . | For . . . | You may . . . |
|---|---|---|---|
| ALT–064 ..... | SW–846 Method 0023A—Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources. | Sources subject to 40 CFR part 63, subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Omit the methylene chloride rinse, and combine acetone and toluene rinses. |
| ALT–065 ..... | SW–846 Method 0011—Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources. | Sources subject to 40 CFR part 63, subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Use Method 320 in lieu of SW–846 Method 0011. |
| | SW–846 Method 0023A—Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources. | Sources subject to 40 CFR part 63, subpart EEE—National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Use Method 23 in lieu of SW–846 Method 0023A. |
| ALT–066 ..... | Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography. | Sources subject to 40 CFR part 60, subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines. | Use TECO Model 55C analyzer to measure methane. |

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 MADE BETWEEN JANUARY 2010 AND DECEMBER 2010—Continued

| Alternative method decision letter/memo No. | As an alternative or modification to . . . | For . . . | You may . . . |
|---|---|---|---|
| ALT–067 ..... | Method 5A—Determination of Particulate Matter Emissions from the Asphalt Processing and Asphalt Roofing Industry. | Asphalt processing and manufacturing sources subject to 40 CFR part 60, subpart UU; 40 CFR part 63, subpart LLLLL; and 40 CFR part 60, subpart AAAAAAA. | Use 1-bromopropane in lieu of 1,1,1-trichloroethane specified in Method 5A. |
| ALT–069 ..... | Performance Specification 4B—Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources. | Sources subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Use Method 3A in lieu of Method 3B as specified in Performance Specification 4B. |
| | 6.4.1 of Appendix to Subpart EEE of Part 63—Quality Assurance Procedures for Continuous Emissions Monitors Used for Hazardous Waste Combustors. | Sources subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. | Forego the use of Method 4 when both CEMS and RM systems are on a "dry" basis during RATAs and during compliance monitoring with the dry basis CEMS. |
| ALT–070 ..... | Method 7—Determination of Nitrogen Oxide Emissions from Stationary Sources. | Sources subject to 40 CFR part 60, subpart G, Standards of Performance for Nitric Acid Plants. | Use Method 320 in lieu of Method 7 with the following caveats: (1) Ensure that no condensation be allowed to form in the sampling line by heating the sampling line up to and including the FTIR sampling cell, (2) follow the quality control procedures in Section 9.0 of Method 320 for all the compounds of interest, and (3) ensure that the recovery values are within acceptable limits as defined by Method 320. |
| ALT–071 ..... | Method 16A—Determination of Total Reduced Sulfur Emissions from Stationary Sources (Impinger Techniques). | Sources subject to 40 CFR part 60, subpart BB—Standards of Performance for Kraft Pulp Mills. | Use proposed Method 16C or an alternative procedure to Method 16A wherein the titration analysis is replaced with a sulfur dioxide analyzer. |
| ALT–072 ..... | Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography. | Sources subject to 40 CFR part 63, subpart GGGGG, National Emission Standards for Hazardous Air Pollutants; Site Remediation. | Use Method 25A in lieu of Method 18. |
| ALT–073 ..... | Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube), Method 2A—Direct Measurement of Gas Volume Through Pipes and Small Ducts, Method 2C—Determination of Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube), or Method 2D—Measurement of Gas Volume Flow Rates in Small Pipes and Ducts. | Sources subject to 40 CFR parts 60.18 and 63.11(b). | Use the mass flow meter in lieu of Method 2, 2A, 2C, or 2D to measure the flow rate for exit velocity at regulated flares as long as the calibration certification is in compliance with the manufacturer recommended frequency. |
| ALT–074 ..... | Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources. | Sources subject to 40 CFR part 63, subpart UUUU, National Emission Standards for Hazardous Air Pollutants from Cellulose Products Manufacturing. | Use an alternative sampling procedure wherein composite samples are collected in tedlar bags in lieu of direct interface to the gas chromatograph as required in Method 15. |
| ALT–075 ..... | Using a $NO_X$ CEMS for the initial 30-day compliance test as specified in 60.46b(e). | Sources subject to 40 CFR part 60, subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units. | Use a PEMS in lieu of a CEMS for the initial 30-day compliance test provided that the requirements of PS–16 are met, and the PEMS input sensors are operated in their established ranges over the 30-day test period. |
| ALT–076 ..... | Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography. | Sources subject to 40 CFR part 60, subpart KKK, Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants. | Use GPA Method 2261 in lieu of Method 18 to meet the requirements of 40 CFR part 60.18(f)(3). |
| ALT–077 ..... | Method 316—Sampling and Analysis for Formaldehyde Emissions from Stationary Sources in the Mineral Wool and Wool Fiberglass Industries. | Sources subject to 40 CFR part 63, subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production. | Use Method 320 in lieu of Method 316. |

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 MADE BETWEEN JANUARY 2010 AND DECEMBER 2010—Continued

| Alternative method decision letter/memo No. | As an alternative or modification to . . . | For . . . | You may . . . |
|---|---|---|---|
| | Method 318—Extractive FTIR Method for the Measurement of Emissions from the Mineral Wool and Wool Fiberglass Industries. | Sources subject to 40 CFR part 63, subpart HHHH, National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production. | Use Method 320 in lieu of Method 318. |
| ALT–078 ..... | Procedures outlined in 40 CFR 60.4241(i). | Sources subject to 40 CFR part 60, subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines. | Use the TECO Model 55C analyzer to measure non-methane organic compounds in lieu of using a flame-ionization detector with a non-methane cutter as specified in 40 CFR 60.4241(i). |
| ALT–079 ..... | NCASI 94.02—Chilled Impinger/Silica Gel Tube Test Method at Pulp Mill Sources for Methanol, Acetone, Acetaldehyde, Methyl Ethyl Ketone, and Formaldehyde. | Sources subject to 40 CFR part 63, subpart S, National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. | Use the method titled "Selected HAPS in Condensates by GC/FID (NCASI Method DI/HAPS–99.01" in lieu of NCASI 94.02. |
| ALT–080 ..... | Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube), Method 2A—Direct Measurement of Gas Volume Through Pipes and Small Ducts, Method 2C—Determination of Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube), or Method 2D—Measurement of Gas Volume Flow Rates in Small Pipes and Ducts. | Sources subject to 40 CFR part 60.18 and 63.11(b). | Use an ultrasonic flow meter in lieu of Method 2, 2A, 2C, or 2D to measure the flare flow rate for exit velocity at regulated flares as long as the calibration certification is in compliance with the manufacturer recommended frequency. |

Source owners or operators should review the specific broadly applicable alternative method approval letter on the EPA's Web site at *http://www.epa.gov/ttn/emc/approalt.html* before electing to employ it.

[FR Doc. 2011–3863 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9268–6; EPA–HQ–OEI–2010–0747]**

## Notification of Deletion of System of Records; EPA Parking Control Office File (EPA–10) and EPA Transit and Guaranteed Ride Home Program Files (EPA–35)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is deleting the systems of records for EPA Parking Control Office File (EPA–10), published in the **Federal Register** on January 25, 1978 (43 FR 3502) and EPA Transit and Guaranteed Ride Home Program Files (EPA–35) published in the **Federal Register** on February 22, 2002. The personally identifiable information in these systems has been integrated into the Office of Administrative Services Information System (OASIS) (EPA–41).

**DATES:** This notice is effective immediately upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ray Lee, IT Specialist, Resources Management Staff (RMS) Team Lead, Office of Administration, OARM, (202) 564–4625 or Jackie Brown, IT Specialist, Office of Administration, RMS, OARM, (202) 564–0313, 1200 Pennsylvania Avenue, NW., Mail Code 3201A, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*How can I get copies of this document and other related information?*

EPA has established a docket for this action under Docket ID No. EPA–HQ–OEI–2010–0747 copies of the available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1745.

*Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

Dated: February 3, 2011.

**Malcolm D. Jackson,**

*Assistant Administrator and Chief Information Officer.*

[FR Doc. 2011–3860 Filed 2–18–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL RESERVE SYSTEM

## Consumer Advisory Council; Notice of Meeting

The Consumer Advisory Council will meet on Thursday, March 10, 2011. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. For security purposes, anyone planning to attend the meeting should register no later than Tuesday, March 8, by completing the form found online at:

*https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Attendees must present photo identification to enter the building and should allow sufficient time for security processing.

The meeting will begin at 9 a.m. and is expected to conclude at 12:15 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

• Foreclosure issues

Members will discuss loss-mitigation efforts, including the Administration's Home Affordable Modification Program, servicing issues related to foreclosures, and the development of national mortgage servicing standards.

• Neighborhood stabilization and REO issues

Members will discuss issues related to the disposition of real estate owned (REO) properties, the impact of foreclosed and vacant properties on communities, and neighborhood stabilization strategies.

• Proposed rules regarding debit card interchange fees and routing

Members will discuss the Board's proposed new Regulation II, which would establish debit card interchange fee standards and prohibit network exclusivity arrangements and routing restrictions as required by the Dodd-Frank Act.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake at 202–452–6470.

Board of Governors of the Federal Reserve System, February 16, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011–3843 Filed 2–18–11; 8:45 am]

**BILLING CODE 6210–01–P**

## 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.

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 March 8, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Commerce Bank & Trust Holding Company,* Topeka, Kansas; to retain 22.98 percent of the voting shares of Financial Institution Technologies, Topeka, Kansas, and thereby indirectly engage in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, February 16, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011–3829 Filed 2–18–11; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0014; Docket 2011–0079; Sequence 1]**

### Federal Acquisition Regulation; Information Collection; Statement and Acknowledgment (Standard Form 1413)

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning statement and acknowledgment (Standard Form 1413).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before April 25, 2011.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0014 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0014" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0014". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and

"Information Collection 9000–0014" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0014.

*Instructions:* Please submit comments only and cite Information Collection 9000–0012, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Clare McFadden, Procurement Analyst, Contract Policy Branch, GSA (202) 501–0044 or e-mail *clare.mcfadden@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Standard Form 1413, Statement and Acknowledgment, is used by all executive agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed contractor acknowledgment of the inclusion of those clauses in the subcontract.

**B. Annual Reporting Burden**

*Respondents:* 31,500.

*Responses per Respondent:* 2.

*Total Responses:* 63,000.

*Hours per Response:* .05.

*Total Burden Hours:* 3,150.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0014, Statement and Acknowledgment (Standard Form 1413), in all correspondence.

Dated: February 8, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide Acquisition Policy.*

[FR Doc. 2011–3791 Filed 2–18–11; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meetings.

This notice announces forthcoming subcommittee meetings of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

*Name of Committees:* HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Enrollment, Governance, Adoption/Certification, PCAST Report, and Information Exchange workgroups.

*General Function of the Committee:* to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The HIT Policy Committee Workgroups will hold the following public meetings during March 2011: March 3rd PCAST Report Workgroup, 1 to 4 p.m./ET; March 3rd Information Exchange Workgroup, 9 a.m. to 12 p.m./ET; March 7th Privacy & Security Tiger Team, 10 a.m. to 12 p.m./ET; March 8th Meaningful Use Workgroup, 10 a.m. to 1 p.m./ET; March 17th PCAST Report Workgroup, 10 a.m. to 1 p.m./ET; March 22nd Meaningful Use Workgroup, 10 a.m. to 1 p.m./ET; and March 23rd Privacy & Security Tiger Team, 2 to 4 p.m./ET.

*Location:* All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov.* Please check the ONC Web site for additional information or revised schedules as it becomes available.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The workgroups will be discussing issues related to their specific subject matter, e.g., meaningful use, information exchange, privacy and security, enrollment, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 10, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–3844 Filed 2–18–11; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Standards Committee's Workgroup Meetings; Notice of Meetings

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS

**ACTION:** Notice of meetings.

This notice announces forthcoming subcommittee meetings of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

*Name of Committees:* HIT Standards Committee's Workgroups: Clinical Operations, Vocabulary Task Force, Implementation, and Privacy & Security workgroups.

*General Function of the Committee:* To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

*Date and Time:* The HIT Standards Committee Workgroups will hold the following public meetings during March 2011: March 9th Privacy & Security Standards Workgroup, 2:30 p.m. to 4 p.m./ET; March 24th Privacy & Security Standards Workgroup, 2 to 3:30 p.m./ET; and March 28th Clinical Operations Workgroup, hearing on medical devices, 9 a.m. to 4 p.m./ET (location: TBD).

*Location:* All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available. Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The workgroups will be discussing issues related to their specific subject matter, e.g., clinical operations vocabulary standards, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 10, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–3846 Filed 2–18–11; 8:45 am]

BILLING CODE 4150–45–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### HIT Standards Committee Advisory Meeting; Notice of Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Standards Committee.

*General Function of the Committee:* To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

*Date and Time:* The meeting will be held on March 29, 2011, from 9 a.m. to 3 p.m./Eastern Time.

*Location:* TBD. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, *Fax:* 202–690–6079, *e-mail: judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 22, 2011. Oral comments from the public will be scheduled between approximately 2 and 3 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures

on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: February 10, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–3842 Filed 2–18–11; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Policy Committee.

*General Function of the Committee:* To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The meeting will be held on March 2, 2011, from 10 a.m. to 3 p.m. Eastern Time.

*Location:* TBD. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov.*

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, *e-mail: judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Privacy & Security Tiger Team, the Information Exchange Workgroup, the Enrollment Workgroup, the PCAST Report Workgroup, and the Quality Measures Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 28, 2011. Oral comments from the public will be scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2).

Dated: February 10, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011–3845 Filed 2–18–11; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60 Day—11–11CE]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send written comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*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 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. Written comments should be received within 60 days of this notice.

**Proposed Project**

The National Health and Nutrition Examination Survey (NHANES) Birth Certificate Linkage Study—New — National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

NCHS's Division of Health and Nutrition Examination Surveys (DHANES) proposes to re-contact women who were pregnant at the time of their participation in NHANES in 1999–2010 and ask permission to link their data to the child's birth certificate data, for the birth that resulted after the survey. This study is funded in collaboration with CDC's National Center for Chronic Disease Prevention and Health Promotion, Division of Reproductive Health (DRH). Participation is completely voluntary and confidential.

A second project, also funded by CDC's DRH, will link the birth certificates of the children sampled in NHANES who were 5–10 years old during the 2005–2010 NHANES. No re-contact of the parents is necessary because informed consent to link to vital records was obtained as part of the NHANES consent process. A two year clearance is sought for these projects.

**Background and Brief Description**

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States.

NHANES was conducted periodically between 1970 and 1994, and continuously since 1999 by the NCHS. A supplemental sample of pregnant women was selected in NHANES from 1999–2006. This resulted in a total of 1,350 pregnant women, from 31 states, in the NHANES. Although this supplemental sample was discontinued after 2006, there are an estimated 150 pregnant women in the NHANES sample for the years 2007–10. This results in a total estimate of 1,500 women for this project.

The NHANES only collected information about the pregnant women at the time of interview. Having information on their children's birth certificates and birth outcomes could provide insight for policy decisions related to maternal and child health. No other survey has the physical examination and nutritional data that NHANES collects on pregnant women.

The second project involves children. From 2005–2010 there were approximately 3,800 children, aged 5–10 years, in the NHANES. Permission to link these children's NHANES records to other administrative records was obtained during the original NHANES consent process.

A similar linkage study was conducted in the past when 8,836 children 2 months through 6 years of age from the Third NHANES (1988–94) had their NHANES data linked to their birth certificate data. These data have been used extensively to examine associations between birth data and health and nutritional status at the time of participation in the NHANES III. The new linkage project data on older children will be similarly valuable.

Consents for these projects will be sent to the appropriate U.S. states, local areas, or territories, where the birth certificate retrievals will then be conducted. Electronic retrieval per records is estimated at two minutes.

NHANES data users include the U.S. Congress; the World Health Organization; numerous Federal agencies such as the National Institutes of Health, the Environmental Protection Agency, and the United States Department of Agriculture; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. This submission requests approval for two years. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| 1. Women who were pregnant during NHANES 1999–2010. | Health Questionnaire/ Consent Form. | 750 | 1 | 20/60 | 250 |
| 3. State/local birth certificate linkage staff (one per U.S. State, locale or Territory)—1999–2010 Births to pregnant women. | Locate and transmit birth certificates. | 57 | 13 | 2/60 | 25 |
| 4. State/local birth certificate linkage staff (one per U.S. State, locale, or Territory)—2005–2010 NHANES Children. | Locate and transmit birth certificates. | 57 | 33 | 2/60 | 63 |
| Total | | | | | 338 |

Dated: February 15, 2011.

**Carol E. Walker,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–3936 Filed 2–18–11; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Human Immunodeficiency Virus (HIV) Prevention Projects for Young Men of Color Who Have Sex With Men and Young Transgender Persons of Color, Funding Opportunity Announcement (FOA) PS11–1113, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates:

8 a.m.–7 p.m., July 10, 2011 (Closed).
8 a.m.–7 p.m., July 11, 2011 (Closed).
8 a.m.–7 p.m., July 12, 2011 (Closed).
8 a.m.–7 p.m., July 13, 2011 (Closed).

*Place:* Atlanta Marriott Century Center, 2000 Century Boulevard NE., Atlanta, Georgia 30345, Telephone (404) 325–0000.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the initial review, discussion, and evaluation of applications received in response to "HIV Prevention Projects for Young Men

of Color Who Have Sex with Men and Young Transgender Persons of Color, FOA PS11–1113."

*Contact Person for More Information:* Harriette Lynch, Public Health Analyst, Extramural Programs, National Center for HIV, Hepatitis and Sexually Transmitted Diseases Prevention, CDC, 1600 Clifton Road, NE., Mailstop E–60, Atlanta, Georgia 30333, Telephone (404) 498–2726, E-mail *HLynch@cdc.gov.*

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 Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 14, 2011.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2011–3930 Filed 2–18–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

*Time and Date:* 9 a.m.–5 p.m., March 14, 2011.

*Place:* Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, Telephone (859) 334–4611, Fax (859) 334–4619.

*Status:* Open to the public, but without a public comment period. To access by conference call dial the following information 1(866) 659–0537, Participant Pass Code 9933701.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

*Purpose:* The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

*Matters To Be Discussed:* The agenda for the Subcommittee meeting includes: selection of individual radiation dose reconstruction cases to be considered for review by the Procedures Subcommittee to evaluate the implementation of the Program Evaluation Report: OCAS–PER–012—Evaluation of Highly Insoluble Plutonium Compounds; discussion of dose reconstruction cases under review (sets 7—9); OCAS dose reconstruction quality management and assurance activities. The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

*Contact Person for More Information:* Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, Telephone (513) 533–6800, Toll Free 1(800) CDC–INFO, E-mail ocas@*cdc.gov*.

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 Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: February 14, 2011.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2011–3931 Filed 2–18–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### NIOSH Dose Reconstruction Program Ten-Year Review—Phase I Report on Customer Service; Request for Public Review and Comment

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Request for public comment.

**SUMMARY:** NIOSH requests public review and comment on the draft publication, "NIOSH Dose Reconstruction Program Ten-Year Review—Phase I Report on Customer Service." This publication is part of a review by NIOSH of its program in support of the role of the Secretary of Health and Human Services under the Energy Employees Occupational Illness Compensation Program Act of 2000 (The Act). As stated in NIOSH Docket #194, Phase I of the review is a data-driven assessment of the dose reconstruction program. The information provided in Phase I will be used by NIOSH in considering recommendations for improving the program during Phase II of the review.

This publication is the Phase I report on one of the five topics under consideration during the program review: The customer service provided by NIOSH in the program. The document can be found at *http://www.cdc.gov/niosh/docket/archive/docket194.html.*

**ADDRESSES:** Written comments may be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C34, Cincinnati, Ohio 45226. All material submitted should reference docket number NIOSH–194 and must be submitted by April 25, 2011 to be considered by the Agency. All electronic comments should be formatted in Microsoft Word. In addition, comments may be sent via e-mail to *nioshdocket@cdc.gov* or by facsimile to 513–533–8285. 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 electronic docket, including any personal information.

**FOR FURTHER INFORMATION CONTACT:** Chia Chang, NIOSH, 395 E St SW., Washington, DC 20201, 202–245–0625.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2011–3822 Filed 2–18–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### NIOSH Dose Reconstruction Program Ten Year Review—Phase I Report on Quality of Science; Request for Public Review and Comment

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Request for public comment.

**SUMMARY:** NIOSH requests public review and comment on the draft publication, "NIOSH Dose Reconstruction Program Ten Year Review—Phase I Report on Quality of Science." This publication is part of a review by NIOSH of its program in support of the role of the Secretary of Health and Human Services under the Energy Employees Occupational Illness Compensation Program Act of 2000 (The Act). As stated in NIOSH Docket #194, Phase I of the review is a data-driven assessment of the dose reconstruction program. The information provided in Phase I will be used by NIOSH in considering recommendations for improving the program during Phase II of the review.

This publication is the Phase I report on one of the five topics under consideration during the program review: The quality of science practiced by NIOSH in the program. The document can be found at *http://www.cdc.gov/niosh/docket/archive/docket194.html.*

**ADDRESSES:** Written comments may be submitted to the NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C34, Cincinnati, Ohio 45226. All material submitted should reference docket number NIOSH–194 and must be submitted by April 25, 2011 to be considered by the Agency. All electronic comments should be formatted in Microsoft Word. In addition, comments may be sent via e-mail to *nioshdocket@cdc.gov* or by facsimile to 513–533–8285. 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 electronic docket, including any personal information.

**FOR FURTHER INFORMATION CONTACT:** Robert Daniels, NIOSH, 4676 Columbia Parkway, Mailstop R–13, Cincinnati, OH 45226, 513–458–7178.

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2011–3823 Filed 2–18–11; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* AFI Financial Education Practices and Cost Study.

*OMB No.:* New collection.

*Description:* The Office of Community Services (OCS) within the Administration for Children and Families is conducting a descriptive study of Financial Education Practices among Assets for Independence (AFI) grantees to increase its knowledge about current practices in financial education for AFI participants and the costs involved to provide the financial education.

The Assets for Independence program is a national demonstration through which OCS awards grants to community-based nonprofit organizations, and State, local, and tribal government agencies nationwide. The AFI program is authorized in Section 402 of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Title IV of Pub. L. 105–285). Grantees implement five year projects that empower low-income families and individuals to save earned income and purchase an economic asset as a means for becoming economically self-sufficient. Grantees provide eligible low-income individuals and families access to matched savings accounts, known as individual development accounts (IDAs). In addition, grantees provide asset-building services to program participants, such as financial literacy education, and specialized asset-specific training regarding asset purchase and ownership.

This data collection effort will provide OCS with a better understanding of the future needs of AFI grantees in financial education and help OCS to build strategies to strengthen the quality of the financial education provided to AFI participants. The data collection will be collected once through two instruments: The Survey of Financial Education Practices of AFI Grantees and the AFI Financial Education Cost Data Form.

The Survey of Financial Education Practices of AFI Grantees will be a Web-based survey consisting mainly of multiple choice questions. All current AFI grantees (approximately 300 grantees) will be asked to complete the survey. The AFI Financial Education Cost Data Form is a supplement to the grantee practices survey. A smaller sample of grantees (approximately 35 grantees) representing a variety of organizational types will be randomly selected to complete this supplemental survey on the costs of providing financial education. The Cost Data Form will be sent to grantees to complete and technical assistance will be provided to grantees to help them complete the form.

*Specific areas to be covered in this study include:* Topics covered by financial education; formats used in delivering financial education; assessment tools that are used to determine participant needs and effectiveness of training efforts; challenges encountered in providing financial education; training materials used; costs and sources of funding for training; strategies for tracking participant progress in developing financial skills; and participant outcomes related to financial education.

*Respondents:* 292 AFI grantee agencies, their partners or sub-grantees, 72 AFI grantee agencies, their partners or sub-grantees' financial personnel.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| AFI Grantee Agencies and Partners | 292 | 1 | 1 | 292 |
| AFI Grantee Agencies, Partners and Financial Personnel | 72 | 1 | 2 | 144 |

Estimated Total Annual Burden Hours: 436.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2011–3803 Filed 2–18–11; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Notice of Allotment Percentages to States for Child Welfare Services State Grants

**AGENCY:** Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Modification of Biennial publication of allotment percentages for States under the Title IV–B subpart 1, Child Welfare Services State Grants Program (CFDA No. 93.645). Originally published on November 24, 2010, **Federal Register** (Vol. 75, Number 226), Pages 71710–71711.

**SUMMARY:** As required by section 423(c) of the Social Security Act (42 U.S.C. 623(c)), the Department is publishing the allotment percentage for each State under the Title IV–B Subpart 1, Child Welfare Services State Grants Program. Under section 423(a), the allotment percentages are one of the factors used in the computation of the Federal grants awarded under the Program.

**DATES:** *Effective Date:* The allotment percentages shall be effective for Fiscal Years 2012 and 2013.

**FOR FURTHER INFORMATION CONTACT:** Deborah Bell, Grants Fiscal Management Specialist, Office of Grants Management, Office of Administration, Administration for Children and Families, telephone (202) 401–4611.

**SUPPLEMENTARY INFORMATION:** The table replaces the originally published allotment percentage for each State that is determined on the basis of paragraphs (b) and (c) of section 423 of the Act. These figures are available on the ACF homepage on the internet: *http://www.acf.dhhs.gov/programs/cb/.* The allotment percentage for each State is as follows:

| State | Allotment percentage |
|---|---|
| Alabama | 58.25 |
| Alaska | 46.21 |
| Arizona | 57.38 |
| Arkansas | 59.66 |
| California | 45.77 |
| Colorado | 46.68 |
| Connecticut | 29.52 |
| Delaware | 49.54 |
| District of Columbia | 30.00 |
| Florida | 50.58 |
| Georgia | 56.64 |
| Hawaii | 47.55 |
| Idaho | 59.33 |
| Illinois | 47.07 |
| Indiana | 57.16 |
| Iowa | 53.28 |
| Kansas | 51.07 |
| Kentucky | 59.99 |
| Louisiana | 53.51 |
| Maine | 54.83 |
| Maryland | 40.04 |
| Massachusetts | 37.21 |
| Michigan | 56.63 |
| Minnesota | 47.04 |
| Mississippi | 62.12 |
| Missouri | 54.94 |
| Montana | 56.61 |
| Nebraska | 50.92 |
| Nevada | 50.67 |
| New Hampshire | 46.16 |
| New Jersey | 36.50 |
| New Mexico | 58.74 |
| New York | 40.82 |
| North Carolina | 56.08 |
| North Dakota | 50.22 |
| Ohio | 55.38 |
| Oklahoma | 55.21 |
| Oregon | 54.60 |
| Pennsylvania | 50.04 |
| Rhode Island | 48.42 |
| South Carolina | 59.34 |
| South Dakota | 52.35 |
| Tennessee | 56.77 |
| Texas | 51.82 |
| Utah | 59.85 |
| Vermont | 51.46 |
| Virginia | 44.74 |
| Washington | 46.22 |
| West Virginia | 61.00 |
| Wisconsin | 53.17 |
| Wyoming | 39.74 |
| American Samoa | 70.00 |
| Guam | 70.00 |
| N. Mariana Islands | 70.00 |
| Puerto Rico | 70.00 |
| Virgin Islands | 70.00 |

Dated: January 24, 2011.

**Bryan Samuels,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 2011–3919 Filed 2–18–11; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–P–0257]**

### Determination That Theophylline Oral Solution, 80 Milligrams/15 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that theophylline oral solution, 80 milligrams (mg)/15 milliliters (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for theophylline oral solution, 80 mg/15 mL, if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Nancy Hayes, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6244, Silver Spring, MD 20993–0002, 301–796–3601.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Theophylline oral solution, 80 mg/15 mL, is the subject of ANDA 087449, held by Roxane Laboratories, Inc. (Roxane), and initially approved on September 15, 1983. ANDA 087449 was identified in the Orange Book as the listed drug for theophylline oral solution, 80 mg/15 mL.

According to the latest version of the approved labeling for theophylline oral solution, 80 mg/15 mL, theophylline is indicated for the treatment of the symptoms and reversible airflow obstruction associated with chronic asthma and other chronic lung diseases, such as emphysema and chronic bronchitis. Roxane notified FDA by letter dated August 4, 2008, that it was no longer marketing theophylline oral solution, 80 mg/15 mL and requested that ANDA 087449 be withdrawn. Theophylline oral solution, 80 mg/15 mL was moved to the "Discontinued Drug Product List" section of the Orange Book.

Silarx Pharmaceuticals, Inc. (Silarx or petitioner), submitted a citizen petition to FDA dated May 29, 2009 (Docket No. FDA–2009–P–0257), under 21 CFR 10.30, requesting that the Agency accept an ANDA submitted by Silarx for theophylline oral solution 80 mg/15 mL, referencing ANDA 087449 as the listed drug. FDA cannot approve the petitioner's ANDA or any ANDA unless it first determines whether ANDA 087449 was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined, under § 314.161, that theophylline oral solution, 80 mg/15 mL, ANDA 087449, was not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that theophylline oral solution, 80 mg/15 mL, was withdrawn from sale for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of theophylline oral solution, 80 mg/15 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events and have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list theophylline oral solution, 80 mg/15 mL, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to theophylline oral solution, 80 mg/15 mL, may be approved by the Agency if they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 15, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–3784 Filed 2–18–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Office of Urban Indian Health Programs; Announcement Type: Limited Competition, Continuation; Funding Announcement Number: HHS–2011–IHS–UIHP–0001

Catalogue of Federal Domestic Assistance Number: 93.193

*Key Dates: Application Deadline Date:* March 23, 2011.

*Review Period:* April 25–27, 2011.

*Earliest Anticipated Start Date:* May 16, 2011.

**I. Funding Opportunity Description**

*Statutory Authority*

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP), announces the FY 2011 limited competition, continuation grants for continued operation support for the 4-in-1 Title V grants to make health care services more accessible for American Indians and Alaska Natives (AI/AN) residing in urban areas. This program is authorized under the authority of the Snyder Act, 25 U.S.C. 1652, 1653, 1660a of Title V of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended.

This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

*Background*

Prior to the 1950s, most AI/ANs resided on reservations, in nearby rural towns, or in Tribal jurisdictional areas such as Oklahoma. In the era of the 1950s and 1960s, the Federal Government passed legislation to terminate its legal obligations to the Indian Tribes, resulting in policies and programs to assimilate Indian people into the mainstream of American society. This philosophy produced the Bureau of Indian Affairs (BIA) Relocation/Employment Assistance Programs (BIA Relocation) which enticed Indian families living on impoverished Indian Reservations to "relocate" to various cities across the country, i.e., San Francisco, Los Angeles, Chicago, Salt Lake City, Phoenix, etc. BIA Relocation offered job training and placement, and was viewed by Indians as a way to escape poverty on the reservation. Health care was usually provided for six months through the private sector, unless the family was relocated to a city near a reservation with an IHS facility service area, such as Rapid City, Phoenix, and Albuquerque. Eligibility for IHS was not forfeited due to Federal Government relocation.

The American Indian and Policy Review Commission found that in the 1950s and 1960s, the BIA relocated over 160,000 AI/ANs to selected urban centers across the country. Today, over 61 percent of all AI/ANs identified in the 2010 census reside off-reservation.

In the late 1960s, urban Indian community leaders began advocating at the local, State and Federal levels for culturally appropriate health programs addressing the unique social, cultural and health needs of AI/ANs residing in urban settings. These community-based grassroots efforts resulted in programs targeting health and outreach services to the urban Indian community. Programs that were developed at that time were in many cases staffed by volunteers, offering outreach and referral-type services, and maintaining programs in storefront settings with limited budgets and primary care services.

In response to efforts of the urban Indian community leaders in the 1960s, Congress appropriated funds in 1966, through the IHS, for a pilot urban clinic in Rapid City. In 1973, Congress appropriated funds to study the unmet urban Indian health needs in Minneapolis. The findings of this study documented cultural, economic, and access barriers to health care and resulted in Congressional appropriations under the Snyder Act to support emerging Urban Indian clinics in several BIA relocation cities, i.e., Seattle, San Francisco, Tulsa, and Dallas.

The awareness of poor health status of all Indian people continued to grow, and in 1976, Congress passed the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, establishing the Urban Indian Health Program under Title V. Congress reauthorized the IHCIA in 2010 under Public Law 111–148 (2010). This law is considered health care reform legislation to improve the health and well-being of all AI/ANs, including urban Indians. Title V specific funding is authorized for the development of programs for AI/ANs residing in urban areas. Since passage of this legislation, amendments to Title V provided resources to and expanded Urban Indian Health Programs in the areas of direct medical services, alcohol services, mental health services, human immunodeficiency virus (HIV) services, and health promotion—disease prevention services.

*Purpose*

Under this grant opportunity, the IHS proposes to award grants to 34 Urban Indian Health Programs (UIHP), which are Urban Indian organizations that have existing IHS contracts, in accordance with 25 U.S.C. 1653(c)–(e), 1660a. This grant announcement seeks to ensure the highest possible health status for AI/ANs. Funding will be used to continue the 34 urban Indian organizations' successful implementation of the priorities of the Department of Health and Human Services (HHS), Strategic Plan Fiscal Years 2007–2012, Healthy People 2020, and the IHS Strategic Plan 2006–2011. Additionally, funding will be utilized to meet objectives for Government Performance Rating Act (GPRA) reporting, collaborative activities with the Veterans Health Administration (VA), and four health programs that make health services more accessible to AI/ANs living in urban areas. The four health services programs are: (1) Health Promotion/Disease Prevention (HP/DP) services, (2) Immunizations, and Behavioral Health Services consisting of (3) Alcohol/Substance Abuse services, and (4) Mental Health Prevention and Treatment services. These programs are integral components of the IHS improvement in patient care initiative and the strategic objectives focused on improving safety, quality, affordability, and accessibility of health care.

## II. Award Information

*Type of Awards*—Limited Competition, Continuation Grants

*Estimated Funds Available*—The total amount of funding identified for the current fiscal year (FY) 2011 is approximately $8 million. 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 34 grants will be issued under this program announcement.

*Project Period*—Five year award. April 1, 2011—March 31, 2016.

*Award Amount*—$135,289 to $612,893, subject to the availability of congressional appropriations.

## III. Eligibility Information

*1. Eligibility*

Competition is limited to those urban Indian organizations currently contracted under Title V of the IHCIA. It is legislatively mandated that the urban Indian organization must have a Title V contract in place to be eligible to apply for a Title V grant. 25 U.S.C. 1653(c)–(e), 1660a. Urban Indian organizations are defined by 25 U.S.C. 1603(29) as 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 described in 25 U.S.C. 1653(a). 25 U.S.C. 1603(29). Each organization must provide proof of non-profit status with the application, including a copy of the 501 (c)(3) Certificate.

*2. Cost Sharing or Matching*

This program 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.

## IV. Application and Submission Information

*1. Obtaining Application Materials*

The Applicant package and instructions may be located at Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp*.

Information regarding the electronic application process may be directed to Paul Gettys at (301) 443–2114.

*2. Content and Form of Application Submission*

The application must include the project narrative as an attachment to the application package.

Mandatory documents for all applications include:

- Application forms:
  - SF–424.
  - SF–424A.
  - SF–424B.
- Budget Narrative (must be single spaced).
- Project Narrative (must not exceed twenty-five pages).
- 501(c)(3) Certificate.
- Biographical sketches of all Key Personnel.
- Disclosure of Lobbying Activities (SF–LLL) (if applicable), *http://www.whitehouse.gov/sites/default/files/omb/grants/sflllin.pdf*.
- Documentation of current OMB A–133 required Financial Audits. Acceptable forms of documentation include:
  - E-mail confirmation from the Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records*

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 with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 25 pages will be reviewed. The narrative consists of three parts: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information
  Section 1: Needs
Part B: Program Planning and Evaluation
  Section 1: Program Plans
  Section 2: Program Evaluation
Part C: Program Report
  Section 1: Describe Major Accomplishments for the Last 9 Months, From April 1, 2010–December 31, 2010
  Section 2: Describe Major Activities Planned for the Next 12 Months, Beginning April 1, 2011

B. Budget Narrative: This narrative must describe the budget requested and match the scope of work described in the project narrative. The page limitation should not exceed three pages.

*3. Submission Dates and Times*

Applications must be submitted electronically through Grants.gov by March 23, 2011 at 12 midnight Eastern Standard Time (EST). Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without further consideration for funding.

If technical challenges arise and the Urban Indian Health Organization (UIHP) is unable to successfully complete the electronic application process, contact Grants.gov Customer Service Support via e-mail to *support@Grants.gov* or phone at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except Federal holidays). If problems persist, contact Paul Gettys, Division of Grants Management (DGM), *Paul.gettys@ihs.gov* at (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM 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 (see page 11 for additional information). 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 DGM (Refer to Section IV to obtain mailing address). Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration. The application must be postmarked by March 23, 2011. Applications received after this date will not be accepted for processing, will be returned to the applicant, and will 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 allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74, all 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 UIHOs do 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 grant/cooperative agreement will be awarded per applicant; and
- 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 "Find Grant Opportunities" 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: *http://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 DGM with a postmark of no later than March 23, 2011.

Division of Grants Management, Indian Health Service, 801 Thompson Avenue, TMP 360, Rockville, MD 20852.

• 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 DGM.

• 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 DGM will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the OUIHP 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 Systems (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. Additionally, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. These requirements will ensure use of a universal identifier to enhance the quality of information available to the public when recipients begin on October 1, 2010 to report information on sub-awards, as required by the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended ("the Transparency Act"). 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.

Central Contractor Registry (CCR)

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR home page at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to finish and your CCR registration will take 3–5 business days to process. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov.*

Additional information on implementing FFATA, including the specific requirements for—DUNS, CCR, can be found on the IHS Grants Policy Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics*

## V. Application Review Information

### *1. Evaluation Criteria*

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing the application.

The narrative should address program progress for the 12 months continuation budget period activities, April 1, 2011 through March 31, 2012.

The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the UIHP. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project.

Points assigned for the criteria are as follows:

• UNDERSTANDING OF THE NEED AND NECESSARY CAPACITY (30 Points)

• WORK PLANS (40 Points)

• PROJECT EVALUATION (15 Points)

• ORGANIZATIONAL CAPABILITIES AND QUALIFICATIONS (10 Points)

• CATEGORICAL BUDGET AND BUDGET JUSTIFICATION (5 Points)

A. PROJECT NARRATIVE: UNDERSTANDING OF THE NEED AND NECESSARY CAPACITY (30 points)

1. Facility Capability

Urban Indian programs provide health care services within the context of the HHS Strategic Plan, Fiscal Years 2007–2012; the IHS Strategic Plan 2006–2011, and four IHS priorities.

Describe the UIHP: (1) Current budget period performance April 1, 2010–December 31, 2010 accomplishments and (2) define activities planned for the 2011 continuation budget period April 1, 2011–March 31, 2012 budget period in each of the following areas:

a. IHS Priorities for American Indian/Alaska Native Health Care

Current governmental trends and environmental issues impact AI/ANs residing in urban locations and require clear and consistent support by the Title V funded UIHP. The IHS Web site is *http://www.ihs.gov.*

(1) Renew and Strengthen Partnerships with Tribes and the UIHPs: The UIHPs have a hybrid relationship with the IHS. With the passage of Public Law 111–148, the Indian Health Care Improvement Act was made permanent.

• Identify what the UIHP is doing to strengthen its partnerships with Tribes and other UIHPs.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned, including information on how results are shared with the community.

c. List the top ten Tribes who members are seen by the program.

(2) Bring Health Care Reform to the UIHPs: In order to support health care reform, it must be demonstrated there is a willingness to change and improve, i.e., in human resources and business practices.

• Describe activities the UIHP is taking to ensure health care reform is being applied.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned.

(3) Improve the Quality of and Access to Care: Customer service is the key to quality care. Treating patients well is the first step to improving quality and access. This area also incorporates Best Practices in customer service.

• Identify activities that demonstrate the UIHP improving quality of and access to care.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned.

(4) Ensure all UIHP work is Transparent, Accountable, Fair, and Inclusive: Quality health care needs to be transparent, with all parties held accountable for that care. Accountability for services is emphasized.

• Describe activities that demonstrate how this is implemented in the UIHP program.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned.

b. HHS Priorities for Health Care

Current governmental trends and environmental issues impact AI/ANs residing in urban locations and require clear and consistent support by the Title V funded UIHP.

1. Health Care Value Incentives: The growth of health care costs is restrained because consumers know the comparative costs and quality of their health care—and they have a financial incentive to care.

• Identify what the UIHP is doing to help its consumers gain control of their health care and have the knowledge to make informed health care decisions.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned, including information on how clinical quality data is shared with consumers and the community.

2. Health Information Technology: The medical clipboard is becoming a thing of the past. Secure interoperable electronic records are available to patients and their doctors anytime, anywhere.

• Describe activities the UIHP is taking to ensure immediate access to accurate information to reduce dangerous medical errors and help control health care costs.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned.

3. Medicare Rx: Every senior has access to affordable prescription drugs. Consumers will inspire plans to provide better benefits at lower costs. Medicare Part D is streamlined and improved to better connect people with their benefits. Pay for Performance methodologies act to increase health care quality.

• Identify activities the UIHP is taking to implement Medicare Rx.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned.

4. Personalized Health Care: Health care is tailored to the individual. Prevention is emphasized. Propensities for disease are identified and addressed through preemptive intervention.

• Describe activities that demonstrate how this is implemented in the UIHP program.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–March 31, 2012 activities planned.

5. Obesity Prevention: The risk of many diseases and health conditions are reduced through actions that prevent obesity. A culture of wellness deters or diminishes debilitating and costly health events. Individual health care is built on a foundation of responsibility for personal wellness.

• Describe activities that demonstrate how the UIHP program is implementing this priority.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–December 31, 2012 activities planned.

6. Tobacco Cessation: The only proven strategies to reduce the risks of tobacco-caused disease are preventing initiation, facilitating cessation, and eliminating exposure to secondhand smoke.

• Describe activities that demonstrate how the UIHP is implementing this priority.

a. April 1, 2010–December 31, 2010 accomplishments.

b. April 1, 2011–December 31, 2012 activities planned.

7. Pandemic Preparedness: The United States is better prepared for an influenza pandemic. Rapid vaccine production capacity is increased, national stockpiles and distribution systems are in place, disease monitoring and communication systems are expanded and local preparedness encompasses all levels of government and society.

• Describe activities that demonstrate how the UIHP is prepared and identify changes, if any, made to the UIHP pandemic preparedness plan.

8. Emergency Response: We have learned from the past and are better prepared for the future. There is an ethic of preparedness at the urban program and throughout the Nation.

• Describe activities that demonstrate how the UIHP is prepared and identify changes, if any, made to the UIHP emergency preparedness plan.

9. Hours of Operation Ensure Access to Care

• Identify the urban program hours of operation and provide assurance that services are available and accessible at times that meet the needs of the urban Indian population, including arrangements that assure access to care when the UIHP is closed.

c. UIHP Collaboration With the Veteran's Health Administration (VA)

In 2007, the UIHPs contacted their local VA Veterans Integrated Services Network and established agreements to collaborate at the local level to expand opportunities to enhance access to health services and improve the quality of health care of AI/AN veterans.

1. Report April 1, 2010–December 31, 2010 results/outcomes of the collaborative activities implemented or explored between your UIHP and your local area VA. Include number of patients who used VA services, number of visits made, and types of healthcare services provided.

2. Identify areas of collaboration and activities that will be conducted between your UIHP and your local area VA for continuation budget period April 1, 2011–March 31, 2012.

d. GPRA Reporting

All UIHPs report on IHS GPRA clinical performance measures. This is required of both urban facilities using the Resource and Patient Management System (RPMS) and facilities not using RPMS. RPMS users must use the Clinical Reporting System (CRS) for reporting, and non-RPMS users must develop a bridge to transfer data from their current data system to RPMS for CRS reporting. Questions related to GPRA reporting may be directed to the IHS Area Office GPRA Coordinator, or Danielle Steward, Health Systems Specialist, OUIHP, *danielle.steward@ihs.gov*

The 2012 GPRA Report Period is July 1, 2011 through June 30, 2012. The GPRA measures to report for 2012 will include the 20 GPRA measures reported for 2010.

Note that the target rates for FY 2011 GPRA are not currently available. They will be provided in calendar year 2011.

1. During the continuation budget period, April 1, 2011–March 31, 2012, the following GPRA measures are priority focus areas for target achievement: (#1) Diabetes: Ideal Glycemic Control: Proportion of patients with diagnosed diabetes with ideal glycemic control (A1c < 7.0) achieve 2011 and 2012 target rates. (#4) Diabetes: Blood Pressure Control: Proportion of patients with diagnosed diabetes that have achieved blood pressure control (< 130/80) achieve 2011 and 2012 target rates. (#9) Cancer Screening: Colorectal Rates: Proportion of eligible patients who have had appropriate colorectal cancer screening.

Briefly describe the steps/activities you will take to ensure your program meets the 2011 target rates for these measures.

2. Significant increases to the measurement targets of (#16) Domestic Violence/Intimate Partner Violence Screening, (#17) Depression Screening, and (#12) Mammography Screening will occur in the 2011 GPRA year. Describe at least two actions you will complete to meet the 2011 desired performance outcomes/results. For programs using RPMS, a Performance Improvement Toolbox is available on the CRS Web site at *http://www.ihs.gov/cio/crs_performance_improvementtoolbox.asp*

3. GPRA Behavioral Health performance measures include alcohol screening, Fetal Alcohol Syndrome (FAS) prevention, domestic (intimate partner) violence screening, depression screening, HIV/AIDS screening and suicide surveillance. Describe actions you will take to improve 2011–2012 desired behavioral health performance outcomes/results.

4. Document your ability to collect and report on the required performance measures to meet GPRA requirements. Include information about your health information technology system.

FY 2011 GPRA Measures

1. Diabetes DX Ever (not a GPRA measure, used for context only).
2. Documented A1c (not a GPRA measure, used for context only).
3. Poor Glycemic Control.
4. Ideal Glycemic Control.
5. Controlled Blood Pressure.
6. Dyslipidemia (LDL) Assessment.
7. Nephropathy Assessment.
8. Influenza 65 years old +.
9. Pneumovax 65 years old +.
10. Childhood Immunizations.
11. Pap Smear Rates.
12. Mammography Rates.
13. Colorectal Cancer Rates.
14. Tobacco Cessation.
15. Alcohol Screening (FAS Prevention).
16. Domestic Violence/Intimate Partner Violence Screening.
17. Depression Screening.
18. Prenatal HIV Screening.
19. Childhood Weight Control.
20. Suicide Surveillance.

e. Schedule of Charges and Maximization of Third Party Payments

1. Describe the UIHP established schedule of charges and consistency with local prevailing rates.

• If the UIHP is not currently billing for billable services, describe the process the UIHP will take to begin third party billing to maximize collections.

2. Describe how reimbursement is maximized from Medicare, Medicaid, State Children's Health Insurance Program, private insurance, etc.

3. Describe how the UIHP achieves cost effectiveness in its billing operations with a brief description of the following:

a. Establishes appropriate eligibility determination.

b. Reviews/updates and implements up-to-date billing and collection practices.

c. Updates insurance at every visit.

d. Maintains procedures to evaluate necessity of services.

e. Identifies and describes financial information systems used to track, analyze and report on the program's financial status by revenue generation, by source, aged accounts receivable, provider productivity, and encounters by payor category.

f. Indicates the date the UIHP last reviewed and updated its Billing Policies and Procedures.

B. Program Planning: Work Plans (40 Points)

A program narrative and a program specific work plan are required for each health services program: (1) Health Promotion/Disease Prevention, (2) Immunizations, (3) Alcohol/Substance Abuse, and (4) Mental Health. Title V of the IHCIA, Public Law 94–437, as amended, identifies eligibility for health services as follows.

Each grantee shall provide health care services to eligible Urban Indians living within the urban service area. An "Urban Indian" eligible for services, as codified at 25 U.S.C. 1603(13), (27), (28), includes any individual who:

(1) Resides in an urban center, which is any community that has a sufficient urban Indian population with unmet health needs to warrant assistance under Title V, as determined by the Secretary, HHS; and who

(2) Meets one or more of the following criteria:

(A) Irrespective of whether he or she lives on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including: (i) Those Tribes, bands, or groups terminated since 1940, and (ii) those recognized now or in the future by the State in which they reside; or

(B) Is a descendant, in the first or second degree, of any such member described in (A); or

(C) Is an Eskimo or Aleut or other Alaska Native; or

(D) Is the descendant of an Indian who was residing in the State of California on June 1, 1852, so long as the descendant is now living in said State; or [1]

(E) Is considered by the Secretary of the Department of the Interior to be an Indian for any purpose; or

(F) Is determined to be an Indian under regulations pertaining to the Urban Indian Health Program that are promulgated by the Secretary, HHS.

[1] Eligibility of California Indians may be demonstrated by documentation that the individual:

(1) Holds trust interests in public domain, national forest, or Indian reservation allotments; or

(2) Is listed on the plans for distribution of assets of California Rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), or is the descendant of such an individual.

Each grantee is responsible for taking reasonable steps to confirm that the individual is eligible for IHS services as an urban Indian.

Program Narratives and Workplans

(1) HP/DP

Program Narrative and Work Plan

Contact your IHS Area Office HP/DP Coordinator to discuss and identify effective and innovative strategies to promote health and enhance prevention efforts to address chronic diseases and conditions. Identify one or more of the strategies you will conduct during budget period April 1, 2011—March 31, 2012.

1. Applicants are encouraged to use evidence-based and promising strategies which can be found at the IHS best practice database at *http://www.ihs.gov/hpdp/*and the National Registry for Effective Programs at *http://modelprograms.samhsa.gov/*

2. Program Narrative. Provide a brief description of the collaboration activities that: (1) Were accomplished April 1, 2010–December 31, 2010, and (2) are planned and will be conducted between your UIHP and the IHS Area Office HP/DP Coordinator during the budget period April 1, 2011 through March 31, 2012.

3. An example of an HP/DP work plan is provided on the following pages. Develop and attach a copy of the UIHP HP/DP Work Plan for April 1, 2011 through March 31, 2012.

SAMPLE 2011 HP/DP WORK PLAN

| Objectives | Activities/time line | Person responsible | Evaluation |
|---|---|---|---|
| Goal: To address physical inactivity and consumption of unhealthy food among youth who are in the 4th to 6th grade in the Watson, Kennedy, Blackwood, and Rocky Hill Elementary schools. | | | |
| 1. Develop school policies to address physical inactivity and consumption of unhealthy foods in the first year of the funding year. | 1. Schedule a meeting with the school health board in the first quarter of the project. | Program Coordinator ..... School Administrator ..... | Progress report on status of policy and documentation of number of participants in parent advisory committee, and number of meetings held. |
| | 2. Establish a parent advisory committee to assist with the development of the policy in 2nd quarter. | | |
| 2. Implement a classroom nutrition curriculum to increase awareness about the importance of healthier foods. | 1. Design pre/post test survey and pilot test with group of students by 2nd quarter. | Program Coordinator ..... IHS Nutritionist ..... | Pre/post knowledge, attitude, and behavior survey. |
| | 2. Schedule a meeting with the School Principal to discuss dates of program implementation by 3rd quarter. | ..... | |
| | 3. Implement the "Healthy Eating" curriculum, a 6-week program in the 2nd quarter. | ..... | |
| | 4. Collect pre/post survey at beginning and end of the program to assess changes. | ..... | |
| 3. Implement physical activity in at least four schools for grades 4th to 6th in first year of the funding. | 1. Contract with SPARK PE to train classroom teachers to implement SPARK PE in the school by 3rd Quarter. | Program Coordinator ..... School Counselor and PE teacher. | 1. Training evaluation and number of participants. |
| | 2. Train volunteers to administer FITNESSGRAM to collect baseline data and post data to assess changes. | ..... | 2. Pre/post FITNESSGRAM Data. |
| Goal: To reduce tobacco use among residents of community X and Y. | | | |
| 1. Establish a tobacco-free policy in the schools and Tribal buildings by year 1. | 1. Schedule a meeting with the Tribal Council and school board to increase awareness of the health effects of tobacco by June 2010. | Tobacco Coordinator ..... | Documentation of the number of participants. |
| | 2. Schedule and conduct tobacco awareness education in the community, schools, and worksites by July 2010 through September 2010. | Tobacco Coordinator ..... Health Educator ..... | Documentation of the number of participants. |
| | 3. Draft a policy and present to the Tribal Council for approval by January 2011. | ..... | Documentation of whether the policy was established. |
| 2. Coordinate and establish tobacco cessation programs with the local hospitals and clinics. | 1. Partner with the American Cancer Association and the Tribal Health Education Coordinators to establish 8-week tobacco cessation programs by July 2010. | Tobacco Coordinator ..... Health Educator ..... Pharmacist ..... | Progress toward timeline. |
| | 2. Meet with the hospital/clinic administrators and pharmacist to discuss and develop a behavior-based tobacco cessation program. | Tobacco Coordinator ..... Health Educator ..... | Progress report indicating timeline is being met. |
| | 3. Design and disseminate brochures and flyers of the tobacco cessation programs that are available in the community and clinic. | Tobacco Coordinator ..... | Number of brochures distributed. |
| | 4. Meet with nursing and medical provider staff to increase patient referral to tobacco cessation program. | Health Educator Tobacco Coordinator ..... | |
| | 5. Implement the 8-week tobacco cessation program at the community X and Y clinic. | Tobacco Coordinator | RPMS data—baseline # of referrals, # of participants who completed program, # who quit tobacco. |

(2) Immunization Services

Program Narrative and Work Plan

1. Program Management Required Activities.

A. Provide assurance that your facility is participating in the Vaccines for Children program.

B. Provide assurance that your facility has look up capability with State/regional immunization registry (where applicable). Please contact Amy Groom, Immunization Program Manager at *amy.groom@ihs.gov* or (505) 248–4374 for more information.

2. Service Delivery Required Activities—For Sites using RPMS.

A. Provide trainings to providers and data entry clerks on the RPMS Immunization package.

B. Establish process for immunization data entry into RPMS (e.g., point of service or through regular data entry).

C. Utilize RPMS Immunization package to identify 3–27 month old children who are not up to date and generate reminder/recall letters.

3. Immunization Coverage Assessment Required Activities.

A. Submit quarterly immunization reports to Area Immunization Coordinator for the 3–27 month old, Two year old and Adolescent and influenza reports. Sites not using the RPMS Immunization package should submit a Two Year old immunization coverage report—an Excel spreadsheet with the required data elements that can be found under the "Report Forms for non-RPMS sites" section at: *http://www.ihs.gov/Epi/index.cfm?module=epi_vaccine_reports*.

4. Program Evaluation Required Activities.

A. Establish baseline for coverage with the 431331* and 4313314** vaccine series for children 19–35 months old.

B. Establish baseline for coverage with influenza vaccine for adults 65 years and older.

C. Establish baseline for coverage with at least one dose of pneumococcal vaccine for adults 65 years and older.

D. Establish baseline coverage for patients (all ages) who received at least one dose of seasonal flu vaccine during flu season.

* The 4:3:1:3:3:1 vaccine series is defined as: = 4 doses diphtheria and tetanus toxoids and pertussis vaccine, diphtheria and tetanus toxoids, or diphtheria and tetanus toxoids and any pertussis vaccine, = 3 doses of oral or inactivated polio vaccine, = 1 dose of measles, mumps, and rubella vaccine, = 3 doses of *Haemophilus influenzae* type b vaccine, = 3 doses of hepatitis B vaccine, and, = 1 of varicella vaccine.

** The 4:3:1:3:3:1:4 vaccine series includes the 4:3:1:3:3:1 series outlined above, +4 or more doses of pneumococcal conjugate vaccine (PCV).

SAMPLE URBAN GRANT FY 2012 WORK PLAN IMMUNIZATION

| Primary prevention objective | Service or program | Target population | Process measure | Outcome measures |
|---|---|---|---|---|
| Protect children and communities from vaccine preventable diseases. | Immunization program. | Children <3 years. | On a quarterly basis:<br># of children 3–27 months old.<br># of children 3–27 months old who are children up to date with age appropriate vaccinations.<br>% of 3–27 month old children up to date with age appropriate vaccinations.<br># of children 19–35 months old.<br># of children 19–35 months old who received the 431331 and 4313314 vaccine series.<br># of children 19–35 months old who received the 431331 and 4313314 vaccine series. | As of June 30th 2012:<br>% of 19–35 month olds up to date with the 431331 and 4313314 vaccine series. |
| Protect adolescents and communities from vaccine preventable diseases. | Immunization program. | Adolescents 13–17 years. | On a quarterly basis:<br># of adolescents 13–17 years old.<br># of adolescents 13–17 years old who are up to date with Tdap, Tdap/Td, Meningococcal, and 1, 2 and 3 dose of HPV (females only).<br>% of adolescents 13–17 years old who are up to date with Tdap, Tdap/Td, Meningococcal, and 1, 2 and 3 dose of HPV (females only). | As of June 30th 2012:<br>% of adolescents 13–17 years old who are up to date with Tdap.<br>% of adolescents 13–17 years old who are up to date with Tdap, females only.<br># of adolescents 13–17 years old who are up to date with Meningococcal vaccine.<br># of adolescents 13–17 years old who are up to date with 1, 2 and 3 dose of HPV (females only). |
| Protect adults and communities from influenza. | Immunization program. | All ages ..... | On a quarterly basis during flu season (e.g., Sept–June)<br># of patients (all ages).<br># of patients who received a seasonal flu shot during the flu season. | As of June 30th, 2012:<br># of patients who received a seasonal flu shot during the flu season. |

SAMPLE URBAN GRANT FY 2012 WORK PLAN IMMUNIZATION—Continued

| Primary prevention objective | Service or program | Target population | Process measure | Outcome measures |
|---|---|---|---|---|
| Protect adults and communities from influenza & Pneumovax. | Immunization program. | Adults >65 years. | % of patients who received a seasonal flu shot during flu season.<br>On a quarterly basis:<br># of adults 65+ years.<br># of adults 65+ years who received an influenza shot during flu season.<br># of adults 65+ years who received a pneumovax shot.<br>% of adults 65+ years who received an influenza shot during flu season.<br>% of adults 65+ years who received a pneumovax shot.. | % of patients who received a seasonal flu shot during the flu season.<br>As of June 30th, 2012:<br>% of adults 65+ years who received an influenza shot Sept. 1, 2010–June 30, 2011.<br>% of adults 65+ years who received a pneumovax shot ever |

(3) Alcohol/Substance Abuse Program Narrative and Work Plan

1. Program Progress Report or Results/Outcomes for April 1, 2010–December 31, 2010.

A. Briefly address the extent to which the program was able to achieve its objectives and demonstrate effective use of funding for April 1, 2010–December 31, 2010.

B. Include quantifiable and qualitative information and describe the relationship to the UDS data submitted for calendar year 2009.

C. Identify Specific Program Services Outcomes/Results:

- State the number of patient encounters (or specific service) per provider staff for this program service,
- List populations and age groups that were targeted (homeless, women, youth, elders, men, etc.), and
- Identify specific outcomes/results that were measured in addition to the number of patient encounters/staff (and not included in the UDS).

2. Narrative Description of Program Services for April 1, 2011–March 31, 2012 Continuation Budget Period.

A. Program Objectives

1. Clearly state the outcomes of the health service.

2. Define needs related outcomes of the program health care service.

3. Define who is going to do what, when, how much, and how you will measure it.

4. Define the population to be served and provide specific numbers regarding the number of eligible clients for whom services will be provided.

5. State the time by which the objectives will be met.

6. Describe objectives in numerical terms—specify the number of clients that will receive services.

7. Describe how achievement of the goals will produce meaningful and relevant results (e.g., increase access, availability, prevention, outreach, pre-services, treatment, and/or intervention).

8. Provide a one-year work plan that will include the primary objectives, services or program, target population, process measures, outcome measures, and data source for measures (*see* work plan sample in Appendix 2).

a. Identify Services Provided: Primary Residential; Detox; Halfway House; Counseling; Outreach and Referral; and Other (Specify).

b. Number of beds: Residential __ , Detox__ ; or Halfway House __.

c. Average monthly utilization for the past year.

d. Identify Program Type: Integrated Behavioral Health; Alcohol and Substance Abuse only; Stand Alone; or part of a health center or medical establishment.

9. Address methamphetamine-related contacts:

a. Identify the documented number of patient contacts during the April 1, 2010–December 31, 2010 budget period, and estimate the number patient contacts during the continuation budget period, April 1, 2011–March 31, 2012.

b. Describe your formal methamphetamine prevention and education program efforts to reduce the prevalence of methamphetamine abuse related problems through increased outreach, education, prevention and treatment of methamphetamine-related issues.

c. Describe collaborative programming with other agencies to coordinate medical, social, educational, and legal efforts.

B. Program Activities

1. Clearly describe the program activities or steps that will be taken to achieve the desired outcomes/results. Describe who will provide (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), and in what context (system, community).

2. State reasons for selection of activities.

3. Describe sequence of activities.

4. Describe program staffing in relation to number of clients to be served.

5. Identify number of Full Time Equivalents (FTEs) proposed and adequacy of this number:

- Percentage of FTEs funded by IHS grant funding; and
- Describe clients and client selection.

6. Address the comprehensive nature of services offered in this program service area.

7. Describe and support any unusual features of the program services, or extraordinary social and community involvement.

8. Present a reasonable scope of activities that can be accomplished within the time allotted for program and program resources.

C. Accreditation and Practice Model

- Name of Program Accreditation
- Type of evidence-based practice
- Type of practice-based model

D. Attach the Alcohol/Substance Abuse Work Plan.

**IHS Urban Grant FY 2011 Work Plan**

ALCOHOL/SUBSTANCE ABUSE PROGRAM SAMPLE WORK PLAN

| Objectives | Service or program | Target population | Process measure | Outcome measures | Data source for measures |
|---|---|---|---|---|---|
| What are you trying to accomplish? | What type of program do you propose? | Who do you hope to serve in your program? | What information will you collect about the program activities? | What information will you collect to find out the results of your program? | Where will you find the information you collect? |
| To prevent substance abuse among urban American Indian youth. | Community-based substance abuse prevention curriculum. | American Indian youth ages 5–18 years old. | # of youth completing the curriculum, # of sessions conducted, # of staff trained. | Incidence/prevalence of substance abuse/dependence. | Medical records, RPMS behavioral health package, National Youth Survey. |
| To prevent substance abuse and related problems. | Afterschool, summer, and weekend activities (e.g. outdoor experiential activities, camps, classroom based problem solving activities). | American Indian youth ages 5–14 years old. | # of youth completing community-based sessions, # of parents completing community- based sessions, # of community-based sessions. | Incidence of substance abuse, incidence of negative and positive attitudes and behaviors, incidence of peer drug use. | Charts, RPMS behavioral health package, National Youth Survey. |
| Reduce drug use and increase treatment retention. | Matrix model for outpatient treatment. | American Indian adult methamphetamine clients. | # of clients completing program, # of relapse prevention sessions, # of family and group therapies, # of drug education sessions, # of self-help groups, # of urine tests. | Incidence of drug use, increase or decrease in treatment retention, positive or negative urine samples. | Medical records, RPMS behavioral health package, Addiction Severity Index, results of urine tests. |

(4) MENTAL HEALTH SERVICES

Program Narrative and Work Plan

Use the alcohol/substance abuse program narrative description template to develop the Mental Health Services program narrative. Attach the UIHP Mental Health Services Work Plan.

**IHS Urban Grant FY 2011 Work Plan**

MENTAL HEALTH PROGRAM SAMPLE WORK PLAN

| Objectives | Service or program | Target population | Process measure | Outcome measures | Data source for measures |
|---|---|---|---|---|---|
| What are you trying to accomplish? | What type of program do you propose? | Who do you hope to serve in your program? | What information will you collect about the program activities? | What information will you collect to find out the results of your program? | Where will you find the information you collect? |
| To promote mental health. | American Indian Life Skills Development curriculum. | American Indian youth ages 13–17 years old. | # of youth completing the curriculum, # of sessions conducted, # of teachers trained, number of community resource leaders trained. | Feelings of hopelessness, problem solving skills. | Medical records, RPMS behavioral health package, Beck Hopelessness Scale, problem solving skills. |
| Improve the mental health of American Indian children and their families. | Home-based, community-based, and office-based mental health counseling. | American Indian children and their families needing services from our community-based program. | # of individual, couples, group, and family counseling sessions, # of home, community, and office-based visits. | Reduced child involvement in juvenile justice and child welfare, improved coping skills, improved school attendance and grades. | Medical records, RPMS behavioral health package coping skill measure, report cards, attendance records. |
| Reduce symptoms related to trauma. | Mental health counseling with cognitive behavioral therapy intervention and historical trauma intervention. | American Indian adults. | # of individual, couples, group, and family counseling sessions, # of historical trauma groups, # of adults counseled. | Incidence of Post-Traumatic Stress Disorder (PTSD) symptoms, incidence of depression, increased coping skills, increased peer and family support. | Self-report PTSD, Beck Depression Inventory, coping skills measure, peer and family support measure, medical records, RPMS behavioral health package. |

**RPMS Suicide Reporting Form**

**Instructions for Completing**

This form is intended as a data collection tool only. It does not replace documentation of clinical care in the medical record and it is not a referral form. The provider should complete a corresponding RPMS Patient Care Components (PCC) or MH/SS encounter form and update the PCC and/or BH problem lists accordingly. Health Record Number, Date of Act and Provider Name are required fields. If the information requested is not known or not listed as an option, choose "Unknown" or "Other" (with specification) as appropriate.

LOCAL CASE NUMBER:
Indicate internal tracking number if used, not required.

DATE FORM COMPLETED:
Indicate the date the Suicide Reporting Form was completed.

PROVIDER NAME:
Record the name of Provider completing the form.

DATE OF ACT:
Record Date of Act as mm/dd/yy. If exact day is unknown, use the month, 1st day of the month (or another default day), year. If exact date of act is unknown, all providers should use the same default day of the month.

HEALTH RECORD NUMBER:
Record the patient's health record number.

DOB/AGE:
Record Date of Birth as mm/dd/yy and patient's age.

SEX:
Indicate Male or Female.

COMMUNITY WHERE ACT OCCURRED:
Record the community code or the name, county and state of the community where the act occurred.

EMPLOYMENT STATUS:
Indicate patient's employment status, choose one.

RELATIONSHIP STATUS:
Indicate patient's relationship status, choose one.

EDUCATION:
Select the highest level of education attained and if less than a High School graduate, record the highest grade completed. Choose one.

SUICIDAL BEHAVIOR:
Identify the self destructive act, choose one. Generally, the threshold for reporting should be ideation with intent and plan, or other acts with higher severity, either attempted or completed.

LOCATION OF ACT:
Indicate location of act, choose one.

PREVIOUS ATTEMPTS:
Indicate number of previous suicide attempts, choose one.

METHOD:
Indicate method used. Multiple entries are allowed, check all that apply. Describe methods not listed.

SUBSTANCE USE INVOLVED:
If known, indicate which substances the patient was under the influence of at the time of the act. Multiple entries allowed, check all that apply. List drugs not shown.

CONTRIBUTING FACTORS:
Multiple entries allowed, check all that apply. List contributing factors not shown.

LETHALITY:
Indicate the level of risk (based on type and location of act, previous number of attempts, method, substance use involved, contributing factors and other clinically relevant information), choose one.

DISPOSITION:
Indicate the type of follow-up planned, if known.

NARRATIVE:
Record any other relevant clinical information not included above.

Note: This document should be shredded after electronic entry into RPMS. updated: 07/16/07

BILLING CODE 4165–16–P

## RPMS Suicide Reporting Form

| | | | |
|---|---|---|---|
| **Local Case Number:** | | **Health Record Number:** | |
| **Date Form Completed:** | | **DOB/Age:** | |
| **Provider Name:** | | **Sex (M/F):** | |
| **Date of Act:** | | **Community Where Act Occurred:** | |

| ✓ | Employment Status | ✓ | Relationship Status | ✓ | Education |
|---|---|---|---|---|---|
| | Part-time | | Single | | High School Graduate/GED |
| | Full-time | | Married | | Less than High School, highest grade completed: |
| | Self-employed | | Divorced/Separated | | Some College/Technical |
| | Unemployed | | Widowed | | College Graduate |
| | Student | | Cohabitating/Common-Law | | Post Graduate |
| | Student and employed | | Same Sex Partnership | | Unknown |
| | Retired | | Unknown | | |
| | Unknown | | | | |
| ✓ | **Suicidal Behavior** | ✓ | **Location of Act** | ✓ | **Previous Attempts** |
| | Ideation with Plan and Intent | | Home or Vicinity | | 0 |
| | Attempt | | School | | 1 |
| | Completed Suicide | | Work | | 2 |
| | Attempted suicide w/ Homicide | | Jail/Prison/Detention | | 3 or more |
| | Completed suicide w/ Homicide | | Treatment Facility | | Unknown |
| | | | Medical Facility | | |
| | | | Unknown | | |
| | | | Other *(specify):* | | |
| | **Method (✓ all that apply)** | | | | |
| | Gunshot | | ***Overdose list:*** | | Non-prescribed opiates (e.g. Heroin) |
| | Hanging | | Aspirin/Aspirin-like medication | | Sedatives/Benzodiazepines/Barbiturates |
| | Motor Vehicle | | Acetaminophen (e.g. Tylenol) | | Alcohol |
| | Jumping | | Tricyclic Antidepressant (TCA) | | Other Prescription Medication (*specify*): |
| | Stabbing/Laceration | | Other Antidepressant (*specify*): | | |
| | Carbon Monoxide | | | | Other Over-the-counter Medication (*specify*): |
| | Overdosed Using (select from list) | | | | |
| | Unknown | | Amphetamine/Stimulant | | Other (*specify*): |
| | Other (*specify*): | | Prescribed Opiates (e.g. Narcotics) | | |
| | **Substances Involved (✓ all that apply)** | | | | |
| | None | | Alcohol | | Inhalants |
| | Alcohol & Other Drugs (select from list) | | Amphetamine/Stimulant | | Non-Prescribed Opiates (e.g. Heroin) |
| | Unknown | | Cannabis (Marijuana) | | Prescribed Opiates (e.g. Narcotics) |
| | | | Cocaine | | Sedatives/Benzodiazepines/Barbiturates |
| | | | Hallucinogens | | Other *(specify):* |
| | | | | | |
| | **Contributing Factors (✓ all that apply)** | | | | |
| | Suicide of Friend or Relative | | History of Substance Abuse/Dependency | | Divorce/Separation/Break-up |
| | Death of Friend or Relative | | Financial Stress | | Legal |
| | Victim of Abuse (Current) | | History of Mental Illness | | Unknown |
| | Victim of Abuse (Past) | | History of Physical Illness | | Other (*specify*): |
| | Occupational/Educational Problem | | | | |
| ✓ | **Lethality** | ✓ | **Disposition** | | **Narrative** |
| | Low | | Mental Health (MH) Follow-up | | |
| | Medium | | Alcohol/Substance Abuse Follow-up | | |
| | High | | Inpatient MH Treatment Voluntary | | |
| | | | Inpatient MH Treatment Involuntary | | |
| | | | Medical Treatment (ED or In-patient) | | |
| | | | Outreach to Family/School/Community | | |
| | | | Unknown | | |
| | | | Other (specify): | | |
| | | | | | |

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C. PROJECT EVALUATION (15 Points)

1. Describe your evaluation plan. Provide a plan to determine the degree to which objectives are met and methods are followed.

2. Describe how you will link program performance/services to budget expenditures. Include a discussion of UDS and GPRA Report Measures here.

3. Include the following program specific information:

a. Describe the expected feasibility and reasonable outcomes (e.g., decreased drug use in those patients receiving services) and the means by which you determined these targets or results.

b. Identify dates of reviews by the internal staff to assess efficacy:

I. Assessment of staff adequacy.
II. Assessment of current position descriptions.
III. Assessment of impact on local community.
IV. Involvement of local community.
V. Adequacy of community/governance board.
VI. Ability to leverage IHS funding to obtain additional funding.
VII. Additional IHS grants obtained.
VIII. New initiatives planned for funding year.
IX. Customer satisfaction evaluations.

4. Quality Improvement Committee (QIC).

The UIHP QIC, a planned, organization-wide, interdisciplinary team, systematically improves program performance as a result of its findings regarding clinical, administrative and cost-of-care performance issues, and actual patient care outcomes including the GPRA and UDS reports (results of care including safety of patients).

a. Identify the QIC membership, roles, functions, and frequency of meetings. Frequency of meeting shall be at least quarterly.

b. Describe how the results of the QIC reviews provide regular feedback to the program and community/governance board to improve services.

1. April 1, 2010–December 31, 2010 accomplishments.

2. April 1, 2011–March 31, 2012 activities planned.

c. Describe how your facility is integrating the care model into your health delivery structure:

1. Identify specific measures you are tracking as part of the Improvements in Patient Care (IPC) work.

2. Identify community members that are part of your IPC team.

3. Describe progress meeting your program's goals for the use of the IPC model within your healthcare delivery model.

D. Progress Report: Organizational Capabilities and Qualifications (10 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the continuation application and program specific work plans. This section includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plans.

1. Describe the organizational structure with a current approved one page organizational chart that shows the board of directors, key personnel, and staffing. Key positions include the Chief Executive Officer or Executive Director, Chief Financial Officer, Medical Director, and Information Officer.

2. Describe the board of directors that is fully and legally responsible for operation and performance of the 501(c)(3) non-profit urban Indian organization:

a. List all current board members by name, sex, and Tribe or race/ethnicity.

b. Indicate their board office held.

c. Indicate their occupation or area of expertise.

d. Indicate if the board member uses the UIHP services.

e. Indicate if the board member lives in the health service area.

f. Indicate the number of years of continuous service.

g. Indicate number of hours of Board of Directors training provided, training dates and attach a copy of the Board of Directors training curriculum.

3. List key personnel who will work on the project.

a. Identify existing key personnel and new program staff to be hired.

b. For all new key personnel only include position descriptions and resumes in the appendix. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

c. Identify who will be writing the progress reports.

d. Indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary if personnel are to be only partially funded by this grant.

E. Categorical Budget and Budget Justification (5 Points)

This section should provide a clear estimate of the project program costs and justification for expenses for the continuation budget period April 1, 2011–March 31, 2012. The budget and budget justification should be consistent with the tasks identified in the work plan.

1. Categorical Budget (Form SF 424A, Budget Information Non-Construction Programs) complete each of the budget periods requested.

a. Provide a narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.

b. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix.

*2. Review and Selection*

Each application will be prescreened by the DGM 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 DGM, via letter, to outline the missing components of the application.

To obtain a minimum score for funding by the Objective Review Committee, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be considered to be "Disapproved" and will be informed via e-mail or regular mail by the IHS Program Office of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page of the application within 60 days of the completion of the Objective Review.

**VI. Award Administration Information**

*1. Award Notices*

The Notice of Award (NoA) will be initiated by DGM 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 and 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, 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 IHS.

*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 DGM 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 DGM. Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/services/ICS.aspx*. If your organization has questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

*4. Reporting Requirements*

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, 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 applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below:

A. Program Progress Report

Program progress reports are required quarterly. These reports will include a brief comparison of actual program accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final program report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report

A quarterly financial status report must be submitted within 30 days of the end of the half year. A final financial status report is due within 90 days of expiration of the budget period. Standard Form 269 (long form) will be used for financial reporting.

C. Annual Audit Report

The reports and records of the urban Indian organization with respect to a contract or grant under Subchapter IV, 25 U.S.C. 1657 shall be subject to audit by the Secretary and the Comptroller General of the United States.

The Secretary shall allow as a cost to any contract or grant entered into under section 1653 of this title the cost of an annual private audit conducted by a certified public accountant.

D. GPRA Report

GPRA reports are required quarterly. These reports are submitted to the IHS Area GPRA Coordinator. RPMS users must use CRS for reporting. Non-RPMS users must use the interface system to transfer data from their current data system to RPMS for CRS reporting.

E. Quarterly Immunization Report

Immunization reports are required quarterly. These reports are submitted to the IHS Area Immunization Coordinator.

F. Federal Cash Transaction Reports

Federal Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch, HHS at: *http://www.dpm.gov.* 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. 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.

F. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR Part 170. The FFATA "Transparency Act", requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective as of October 1, 2010, IHS implemented a Term of Award into all Notice of Awards issued on/after the date of this announcement by incorporating it on all IHS Standard Terms and Conditions. For the full IHS award term implementing this requirement and additional award applicability information see the Grants Policy Web site at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics*

Although referenced on all Notices of Award, the following IHS Term of Award is applicable to all New (Type 1) IHS grant and cooperative agreement awards issued on or after October 1, 2010. Additionally, all IHS Renewal (Type 2) grant and cooperative agreement awards and Competing Revision awards (Competing T–3s) issued on or after October 1, 2010 may also be subject to the following award term. Further guidance on Renewal and Competing Revision awards is expected to be provided as it becomes available. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

G. Unmet Needs Report

An unmet needs report is required quarterly. These reports will include information gathered to: (1) Identify gaps between unmet health needs of urban Indians and the resources available to meet such needs; and (2) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians.

**VII. Agency Contacts**

For program-related information:

Phyllis S. Wolfe, Director, Office of Urban Indian Health Programs, 801 Thompson Avenue, Suite 200, Rockville, Maryland 20852. (301) 443–4680 or *phyllis.wolfe@ihs.gov.*

For general information regarding this announcement:

Danielle Steward, Health Systems Specialist, Office of Urban Indian Health Programs, 801 Thompson Avenue, Room 200, Rockville, MD 20852. (301) 443–4680 or *danielle.steward@ihs.gov.*

For specific grant-related and business management information:

Pallop Chareonvootitam, Grants Management Specialist, 801 Thompson Avenue, TMP 360, Rockville, MD 20852. (301) 443–5204 or *pallop.chareonvootitam@ihs.gov.*

Dated: February 7, 2011.

**Yvette Roubideaux,**

*Director, Indian Health Service.*

**Appendix—Title V Urban Indian Health 4-in-1 Grants**

1. Indian Health Service Area HP/DP Coordinators
2. Indian Health Service Behavioral Health Area Consultants
3. Indian Health Service Area GPRA Coordinators
4. Indian Health Service/Veterans Health Administration Area Points of Contact

**Indian Health Service Area HP/DP Coordinators**

**Aberdeen Area IHS Office**

Janelle Trottier, MSW, LCSW, Aberdeen Area Health Systems Specialist, 115 Fourth Avenue, SE, Rm 309, Aberdeen, SD 57401, Phone: (605) 226–7474, Fax: (605) 226–7670, Email: *janelle.trottier@ihs.gov.*.

**Albuquerque Area IHS Office**

**Alaska Area IHS Office**

Margaret David, BS, Alaska Native Tribal Health Consortium, Community Health Services, Office of Alaska Native Health Research, 4000 Ambassador Drive—Floor 4, Anchorage, AK 99508, Phone: (907) 729–3634, Fax: (907) 729–3652, Email: *mohdavid@anthc.org.*

**Bemidji Area IHS Office**

Theresa Clay, MS, 5300 Homestead Road, NE, Division of Clinical Quality/HPDP, Albuquerque, NM 87110, Phone: (505) 248–4772, Fax: (505) 248–4257, Email: *theresa.clay@ihs.gov.*.

**Billings Area IHS Office**

VACANT, 2900 4th Ave. N., P.O. Box 36600, Billings, MT 59107, Phone: (406) 247–7118, Fax: (406) 247–7231, Email:.

**Nashville Area IHS Office**

VACANT, 711 Stewarts Ferry Pike, Nashville, TN 37214–2634, Phone: (615) 467–1628, Fax: (615) 467–1665, Email:.

**Oklahoma Area IHS Office**

Freda Carpitcher, MPH, Five Corporate Plaza, 3625 NW 56th Street, Oklahoma City, OK 73112, Phone: (405) 951–3717, Fax: (405) 951–3916 , Email: *freda.carpitcher@ihs.gov.*.

**Portland Area IHS Office**

Joe W. Law, BS, 1414 NW Northrup St., Ste. 800, Portland, OR 97209, Phone: (503) 414–5597, Fax: (503) 414–7795, Email: *joe.law@ihs.gov*.

**IHS National Programs Albuquerque**

Alberta Becenti, MPH, 5300 Homestead Rd., NE, Albuquerque, NM 87110, Phone: (505) 248–4238, Email: *alberta.becenti@ihs.gov*.

Michelle Archuleta, MS, 522 Minnesota Ave., NW, Bemidji, MN 56601, Phone: (218) 444–0492, Fax: (218) 444–0513, Email: *michelle.archuleta@ihs.gov*.

**California Area IHS Office**

Beverly Calderon, RD, MS, CDE, 1320 W. Valley Parkway, Suite 309, Escondido, CA 92029, Phone: (760) 735–6884, Fax: (760) 735–6893, Email: *beverly.calderon@ihs.gov*.

**Navajo Area IHS Office**

Marie Nelson, BS, Navajo Area Indian Health Service, P.O. Box 9020 (NAIHS Complex), Window Rock, AZ 86515–9020, Phone: (928) 871–1338, Fax: (928) 871–5872, Email: *marie.nelson@na.ihs.gov*.

**Phoenix Area IHS Office**

Shannon Beyale, MPH, Phoenix Area Indian Health Service, Two Renaissance Square, 40 North Central Ave., Phoenix AZ 85004, Phone: (602) 364–5155, Fax: (602) 364–5025, Email: *Shannon.beyale@ihs.gov*.

**Tucson Area IHS Office**

Shawnell Damon, MPH, 7900 South "J" Stock Road, Tucson, AZ 85746–7012, Phone: (520) 295–2492, Fax: (520) 295–2602, Email: *shawnell.damon@ihs.gov.*

## DIVISION OF BEHAVIORAL HEALTH

### Behavioral Health Area Consultants Point of Contacts

| | |
|---|---|
| ABERDEEN: | |
| Vicki Claymore-Lahammer, PhD, (605) 226–7341, *vicki.claymore-lahammer@ihs.gov*. | Federal Building, 115 Fourth Avenue, SE., Aberdeen, SD 57401. |
| ALBUQUERQUE: | |
| Christopher Fore, PhD, (505) 248–4444, *christopher.fore@ihs.gov* | 5300 Homestead Road, NE., Albuquerque, NM 87110. |
| ALASKA: | |
| Kathleen Graves, PhD, (907) 729–4594, *kgraves@anmc.org* ..... | 4000 Ambassador Drive, Room 443, Anchorage, AK 99508. |
| BEMIDJI: | |
| Dawn L. Wylie, MD, MPH, (218) 444–0491, *dawn.wylie@ihs.gov* ... | 522 Minnesota Avenue, Bemidji, MN 56601. |
| BILLINGS: | |
| Susan Fredericks, RPH, MA, (406) 247–7104, *susan.fredericks@ihs.gov*. | 2900 4th Avenue North, Billings, MT 59101. |
| Margene Tower, R.N., M.S., (406) 247–7116, *margene.tower@ihs.gov*. | Do. |
| CALIFORNIA: | |
| David Sprenger, MD, (916) 930–3981, Ext. 321, *david.sprenger@ihs.gov*. | 650 Capitol Mall, Suite 7–100, Sacramento, CA 95814. |
| Dawn M. Phillips, R.N., M.P.A., (916) 930–3981, Ext. 331, *dawn.phillips@ihs.gov*. | Do. |
| NASHVILLE: | |
| Palmeda Taylor, PhD, (615) 467–1534, *palmeda.taylor@ihs.gov* ... | 711 Stewarts Ferry Pike, Nashville, TN 37214. |
| NAVAJO: | |
| Jayne Talk-Sanchez, (505) 368–7420, *jayne.talk-sanchez@ihs.gov* | N. HWY 666, P.O. Box 160, Shiprock, NM 87420. |
| OKLAHOMA: | |
| Don Carter, (405) 951–3817, *don.carter@ihs.gov* ..... | 5 Corporate Plaza, 3625 NW. 56th Street, Oklahoma City, OK 73112. |
| PHOENIX: | |
| David Atkins, LISW, ACSW, (602) 364–5159, *david.atkins@ihs.gov* | 40 North Central Avenue, Suite 606, Phoenix, AZ 85004. |
| David McIntyre, (602) 364–5183, *david.mcintyre@ihs.gov*, Mental Health Consultant. | Do. |
| Linda Westover, LCSW, (602) 364–5157, *linda.westover@ihs.gov*, Social Work Consultant. | Do. |
| PORTLAND: | |
| Ann Arnett, (503) 326–2005, *Ann.arnett@ihs.gov* ..... | 1220 SW. Third Avenue, Room 476, Portland, OR 97204. |
| TUCSON: | |
| Patricia Nye, MD, LISAC, (520) 295–2469, *patricia.nye@ihs.gov* ... | 7900 South J Stock Road, Tucson, AZ 85746. |
| HQ STAFF: | |
| Shelly Carter, (301) 443–0226, *shelly.carter@ihs.gov* ..... | 801 Thompson Ave., Suite 300, Rockville, MD 20852. |
| Michele Muir, (301) 443–2040, *michele.muir@ihs.gov* ..... | Do. |
| Rose Weahkee, PhD, (301) 443–1539, *rose.weahkee@ihs.gov* ..... | Do. |
| Amina Bashir, (301) 443–6581, *amina.bashir@ihs.gov* ..... | Do. |
| Debbie Black, (301) 443–8028, *debbie.black@ihs.gov* ..... | Do. |
| Jon Perez, PhD, (301) 281–1777, *jon.perez@ihs.gov* ..... | Phoenix, AZ. |

## AREA GPRA COORDINATORS AS OF AUGUST 2009

| Area | GPRA coordinator(s) | Contact information |
|---|---|---|
| Aberdeen | Janelle Trottier | *janelle.trottier@ihs.gov*, (605) 226–7474 |
| Alaska | Bonnie Boedeker | *Bonnie.Boedeker@ihs.gov*, (907) 729–3665. |
| Albuquerque | Steve Petrakis | *steve.petrakis@ihs.gov*, (505) 248–1361. |
| Bemidji | Jason Douglas | *Jason.Douglas@ihs.gov*, (218) 444–0550. |
| Billings | Carol Strashiem | *carol.strasheim@ihs.gov*, (406) 247–7111. |
| California | Elaine Brinn | *Elaine.Brinn@ihs.gov*, (916) 930–3927 ext. 320. |
| Nashville | Kristina Rogers | *Kristina.Rogers@ihs.gov*, (615) 467–2926. |
| Navajo | Jenny Notah | *Genevieve.Notah@ihs.gov*, (928) 871–5836. |
| Oklahoma | Marjorie Rogers | *Marjorie.Rogers@mail.ihs.gov*, (405) 951–6020. |
| Phoenix | Jody Sekerak | *Jody.Sekerak@ihs.gov*, (602) 364–5274. |
| Portland | Mary Brickell | *Mary.Brickell@ihs.gov*, (503) 326–5592. |
| Tucson | Scott Hamstra, M.D | *Scott.hamstra@ihs.gov*, (520) 295–2406. |

## IHS/VA AREA POINTS OF CONTACT

| IHS | | | VA | | |
|---|---|---|---|---|---|
| Aberdeen Area—North Dakota, South Dakota, Iowa, Nebraska. | Dr. George Ceremuga (Acting). | *george.ceremuga@ihs.gov,* (605)-964–7724. | VISN 23—South Dakota, North Dakota, Nebraska, Iowa, Minnesota. | Ms. Carla Belle Alexander. | *carlabelle.alexander@va.gov,* (605) 720–7337. |
| Alaska Area—Alaska | Dr. Kenneth Glifort | *Kenneth.Glifort@ihs.gov,* (907) 729–3686. | VISN 20—Alaska, Idaho, Oregon, Washington. | Mr. Alexander Spector. | *alexander.spector@va.gov,* (907) 257–5460. |
| Albuquerque Area—Colorado, New Mexico, Texas. | Dr. Leonard Thomas | *Lenonard.Thomas@ihs.gov, (505) 248–4115.* | VISN 18—New Mexico, Texas, Arizona. | VISN 18—Ms. Deborah Thompson. | *deborah.thompson7ec@va.gov,* (928) 776–6001. |
| | | | VISN 19—Colorado, Utah, Montana. | VISN 19—Mr. James Floyd. | *james.floyd@va.gov,* (801) 582–1565 x1500. |
| Bemidji—Minnesota, Wisconsin, Michigan. | Dr. Dawn Wyllie | *Dawn.Wyllie@ihs.gov,* (218) 444–0491. | VISN 11—Michigan, Illinois, Indiana. | VISN 11—Mr. Gabriel Perez. | *g.perez@va.gov,* (734) 761–5488. |
| | | | VISN 12—Illinois, Wisconsin, Michigan. | VISN 12—Dr. Ed Zarling. | *edwin.zarling@va.gov,* (708) 202–8413. |
| | | | VISN 23—Minnesota, SD, ND, IA, NE. | VISN 23—Ms. Carla Belle Alexander. | *carlabelle.alexander@va.gov,* (605) 720–7337. |
| Billings—Montana, Wyoming. | Dr. Doug Moore | *doug.moore@ihs.gov,* (406) 247–7129. | VISN 19—Wyoming, Colorado, Montana, Utah. | Mr. James Floyd | *james.floyd@va.gov,* (801) 582–1565 x1500. |
| California—California, Hawaii. | Dr. David Sprenger | *david.sprenger@ihs.gov,* (916) 930–3981. | VISN 21—Northern California, Hawaii, Nevada. | VISN 21—Ms. Martha Akrop. | *martha.akrop@va.gov,* (775) 328–1428. |
| | | | VISN 22—So. California, Nevada. | VISN 22—Ms. Barbara Fallen. | *barbara.fallen@va.gov,* (562) 826–5963. |
| Headquarters—Washington D.C./Rockville MD. | Dr. Susan Karol<br>Mr. Leo Nolan | *susan.karol@ihs.gov,* (301) 443–1083.<br>*leo.nolan@ihs.gov,* (301)-443–7261. | VA Central Office | Ms. Louise Van Diepen. | *Louise.VanDiepen@va.gov,* (202) 273–5878. |
| Nashville—TX, LA, AR, MS, AL, MO, IL, IN, TN, KY, OH, GA, FL, SC, NC, VA, WV, PA, MD, DC, DE, NY, CT, MA, VT, NH, RI, ME, NJ. | Ms. Elizabeth Neptune. | *Elizabeth.Neptune@ihs.gov,* (207) 214–6524.. | VISN 1—MA, NH, CT, RI, ME, VT. | VISN 1—Dr. Gail Goza-MacMullan. | *gail.goza-macmullan@med.va.gov,* (781) 687–3412. |
| | | | VISN 2—New York State. | VISN 2—Dr. Scott Murray VISN 2 (alt)—Dr. Bruce Nelson. | *scott.murray@va.gov,* (518) 626–7310<br>*bruce.nelson@va.gov,* (518) 626–5320. |
| | | | VISN 3—NYC, NJ | VISN 3—Dr. James Smith. | *james.smith@med.va.gov,* (718) 741–4135. |
| | | | VISN 6—NC, WV, VA | VISN 6—Mr. Mark Hall. | *mark.hall@med.va.gov,* (919) 956–5541. |
| | | | VISN 7—GA, AL, SC | VISN 7—Mr. Brian Heckert. | *brian.heckert@va.gov,* (803) 695–7980. |
| | | | VISN 8—FL, PR | VISN 8—TBD | TBD. |
| | | | VISN 12—IL, MI, WI | VISN 12—Dr. Ed Zarling. | *edwin.zarling@va.gov,* (708) 202–8413 |
| | | | | VISN 15—Dr. James Sanders. | *james.sanders@med.va.gov,* (816) 701–3000. |
| | | | VISN 16—OK, LA, MS, AR, TX,. | VISN 16—Mr. Adam Walmus. | *adam.walmus2@va.gov,* (918) 680–3644. |
| | | | VISN 17—TX | VISN 17—Mr. Jack Dufon. | *jack.dufon2@med.va.gov,* (817) 385–3786. |
| | | | VISN 18—NM, TX, AZ. | VISN 18—Ms. Deborah Thompson. | *deborah.thompson7ec@va.gov,* (928) 776–6001. |
| Navajo—Arizona, Utah, New Mexico. | Ms. Patricia Olson<br>Dr. Douglas Peter (alt.). | *Patricia.Olson@ihs.gov,* (928) 871–5811.<br>*Douglas.Peter@ihs.gov,* (928) 871–5813. | VISN 18—New Mexico, TX, Arizona. | VISN 18—Ms. Deborah Thompson. | *deborah.thompson7ec@va.gov,* (928) 776–6001. |
| | | | VISN 19—Wyoming, Colorado, Montana, Utah. | VISN 19—Mr. James Floyd. | *james.floyd@va.gov,* (801) 582–1565 x1500. |
| Oklahoma—Oklahoma, Kansas, Texas. | Dr. John Farris | *John.Farris@ihs.gov,* (405) 951–3776. | VISN 15—Kansas, Missouri. | VISN 15—Dr. James Sanders. | *james.sanders@med.va.gov,* (816) 701–3000. |
| | | | VISN 16—Oklahoma, Louisiana, Mississippi, Arkansas, Texas. | VISN 16—Mr. Adam Walmus. | *adam.walmus2@va.gov,* (918) 680–3644. |

IHS/VA AREA POINTS OF CONTACT—Continued

| IHS | | | VA | | |
|---|---|---|---|---|---|
| | | | VISN 18—New Mexico, Texas, Arizona. | VISN 18—Ms. Deborah Thompson. | *deborah.thompson7ec@va.gov,* (928) 776–6001. |
| Phoenix—Nevada, Utah, Arizona. | Dr. Charles (Ty) Reidhead. Dr. Augusta Hays (alt.). | *charles.reidhead@ihs.gov,* (602) 364–5039. *Augusta.Hays@ihs.gov,* (602) 364–5039. | VISN 18—New Mexico, Texas, Arizona. | VISN 18—Ms. Deborah Thompson. | *deborah.thompson7ec@va.gov,* (928) 776–6001. |
| | | | VISN 19—Wyoming, Colorado, Montana, Utah. | VISN 19—Mr. James Floyd. | *james.floyd@va.gov,* (801) 582–1565 x1500. |
| | | | VISN 21—Northern California, Hawaii, Nevada. | VISN 21—Ms. Martha Akrop. | *Martha.Akrop@va.gov,* (775) 328–1428. |
| | | | VISN 22—So. California, Nevada. | VISN 22—Ms. Barbara Fallen. | *barbara.fallen@va.gov,* (562) 826–5963. |
| Portland—Washington, Oregon, Idaho. | Mr. Terry Dean ..... | *Terry.Dean@ihs.gov,* (503) 326–7270. | VISN 20—Alaska, Idaho, Oregon, Washington. | Mr. Alexander Spector. | *alexander.spector@va.gov,* (907) 257–5460. |
| Tucson—Arizona ..... | Dr. John R. Kittredge | *John.Kittredge@ihs.gov,* (520) 295–2406. | VISN 18—New Mexico, Texas, Arizona. | Ms. Deborah Thompson. | *deborah.thompson7ec@va.gov,* (928) 776–6001. |

[FR Doc. 2011–3856 Filed 2–18–11; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form G–845 and Supplement; Revision of a Currently Approved Information Collection; Comment Request

**ACTION:** *60-Day Notice of Information Collection Under Review:* Form G–845 and Supplement; Document Verification Request, and Document Verification Request Supplement; OMB Control No. 1615–0101.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 25, 2011.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0101 in the subject box.

**Note:** The address listed in this notice should only be used to submit comments concerning the revision of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Overview of this information collection:*

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Document Verification Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–845 and Supplement. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The information collections allow for the verification of immigration status of certain persons applying for benefits under certain entitlement programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–845—248,206 responses at 5 minutes (.083) per response; Supplement—11,247 responses at 5 minutes (.083) per response; Automated Queries 11,839,892 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,004,246 annual burden hours.

If you need a copy of this information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: February 15, 2011.

**Sunday Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–3786 Filed 2–18–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Notice of Detention

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0073.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Notice of Detention. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before April 25, 2011, to be assured of consideration.

**ADDRESS:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

*Title:* Notice of Detention.

*OMB Number:* 1651–0073.

*Form Number:* None.

*Abstract:* Customs and Border Protection (CBP) may detain merchandise when it has reasonable suspicion that the subject merchandise may be inadmissible but requires more information to make a positive determination. If CBP decides to detain merchandise, a Notice of Detention is sent to the importer or to the importer's broker/agent no later than 5 business days from the date of examination stating that merchandise has been detained, the reason for the detention, and the anticipated length of the detention. The recipient of this notice may respond by providing information to CBP in order to facilitate the determination for admissibility or may ask for an extension of time to bring the merchandise into compliance. Notice of Detention is authorized by 19 U.S.C. 1499, and provided for in 19 CFR 151.16.

*Current Actions:* CBP proposes to extend the expiration date of this information collection with no change to the burden hours. There is no change to the information being collected.

*Type of Review:* Extension.

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 1,350.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 1,350.

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 2,700.

Dated: February 16, 2011.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2011–3912 Filed 2–18–11; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities: Passenger List/Crew List (CBP Form I–418)

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security

**ACTION:** 30-Day notice and request for comments; Extension of an existing information collection: 1651–0103.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Passenger List/Crew List (CBP Form I–418). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 76021) on December 7, 2010, allowing for a 60-day comment period. Four comments were received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before March 24, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

**SUPPLEMENTARY INFORMATION:** U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who

are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

*Title:* Passenger List/Crew List.

*OMB Number:* 1651–0103.

*Form Number:* CBP Form I–418.

*Abstract:* CBP Form I–418 is prescribed by the Department of Homeland Security, Customs and Border Protection (CBP), for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is working to allow for electronic submission of the information on CBP Form I–418. This form is provided for in 8 CFR 251.1, 251.3, and 251.4. A copy of CBP Form I–418 can be found at *http://forms.cbp.gov/pdf/CBP_Form_I418.pdf.*

*Current Actions:* This submission is being made to extend the expiration date with no change to information collected or to CBP Form I–418.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Estimated Number of Respondents:* 95,000.

*Estimated Time per Respondent:* 1 hour.

*Estimated Total Annual Hours:* 95,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

Dated: February 16, 2011.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2011–3921 Filed 2–18–11; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 99 Castle Coakley, Christiansted, St. Croix, VI 00820, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on August 10, 2010. The next triennial inspection date will be scheduled for August 2013.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: February 10, 2011.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2011–3828 Filed 2–18–11; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 2610 S. Federal Highway, Fort Lauderdale, FL 33316, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on August 24, 2010. The next triennial inspection date will be scheduled for August 2013.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: February 10, 2011.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2011–3827 Filed 2–18–11; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 1201 W. 8th at Georgia Ave., Deer Park, TX 77536, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on September 08, 2010. The next triennial inspection date will be scheduled for September 2013.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: February 10, 2011.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2011–3830 Filed 2–18–11; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 4871 Sunrise Dr., suite102, Martinez, CA 94553, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on July 08, 2010. The next triennial inspection date will be scheduled for July 2013.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: February 10, 2011.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2011–3834 Filed 2–18–11; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 3773 Pacheco Blvd., Suite D, Martinez, CA 94553, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

*http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on July 8, 2010. The next triennial inspection date will be scheduled for July 2013.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: February 10, 2011.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2011–3835 Filed 2–18–11; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Approval of SGS North America, Inc., as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of SGS North America, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., 1267 N. Witter St., Pasadena, TX 77536, has been approved to gauge petroleum and petroleum products for customs purposes in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

**DATES:** The approval of SGS North America, Inc., as commercial gauger became effective on August 24, 2010. The next triennial inspection date will be scheduled for August 2013.

**FOR FURTHER INFORMATION CONTACT:** Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: February 10, 2011.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 2011–3831 Filed 2–18–11; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5496–N–02]**

### Notice of a Federal Advisory Committee Meeting Manufactured Housing Consensus Committee

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

**ACTION:** Notice of a federal advisory committee meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda for a meeting of the Manufactured Housing Consensus Committee (the Committee). The meeting is open to the public and the site is accessible to individuals with disabilities.

**DATES:** The meeting will be held on March 9–10, 2011, commencing at 9 a.m. of each day.

**ADDRESSES:** The meeting will be held at: Sheraton Suites Alexandria, 801 North Saint Asaph Street, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Cocke, Deputy Administrator, Department of Housing and Urban Development, 451 7th Street, SW., Room 9164, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2), through implementing regulations at 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), providing:

(A) *Purpose:* There is established a committee to be known as the "consensus committee", which shall, in accordance with this title—

(i) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

(ii) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);

(iii) Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation; and,

(iv) Be deemed to be an advisory committee not composed of Federal employees.

*Tentative Agenda:* March 9–10, 2011.

Convene
Call to Order
Federal Advisory Committee Preliminaries
Roll Call/Establish Quorum
Welcome/Introductions/New Members
Administrative Matters/Announcements
Public Comments (a public comments period will be provided each day of the meeting)
Review/Approve Minutes of the October 27–28, 2010 Meeting
Report from HUD Manufactured Housing Program Office
Review Log of Proposals
Call for Committee Reports
Proposals
Subcommittees to MHCC
MHCC to HUD
HUD to MHCC
Special Actions
HUD proposed Interpretive Bulletins
Section 5 actions
Special actions in emergencies or
Failure of the Committee to make a timely recommendation
Adjourn

Dated: February 15, 2011.

**Ronald Y. Spraker,**

*Associate General Deputy Assistant Secretary for Housing.*

[FR Doc. 2011–3790 Filed 2–18–11; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R4–ES–2011–N029; 41910–1112–0000–F2]**

### Endangered and Threatened Wildlife and Plants; Receipt of Application for Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan; Deltona Retail Holdings, LLC, Volusia County, FL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt; request for comment/information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have received an application from Deltona Retail Holdings, LLC (applicant), for a 10-year

incidental take permit (ITP; #TE35022A–0) under the Endangered Species Act of 1973, as amended (Act). We request public comment on the permit application and accompanying proposed habitat conservation plan (HCP), as well as on our preliminary determination that the plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination we used our environmental action statement and low-effect screening form, which are also available for review.

**DATES:** To ensure consideration, please send your written comments by March 24, 2011.

**ADDRESSES:** If you wish to review the application and HCP, you may request documents by e-mail, U.S. mail, or phone (*see* below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

*E-mail: northflorida@fws.gov.* Use "*Attn:* Permit number TE35022A–0" as your message subject line.

*Fax:* Field Supervisor, (904) 731–3045, *Attn.:* Permit number TE35022A–0.

*U.S. mail:* Field Supervisor, Jacksonville Ecological Services Field Office, *Attn:* Permit number TE35022A–0, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

*In-person drop-off:* You may drop off information during regular business hours at the above office address.

**FOR FURTHER INFORMATION CONTACT:** Erin Gawera, *telephone:* (904) 731–3121; *e-mail: erin_gawera@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

## Applicant's Proposal

The applicant is requesting take of approximately 2.71 ac of occupied Florida scrub-jay foraging and sheltering habitat incidental to construction of a commercial center, and seeks a 10-year permit. The 131-ac project is located on parcel #07–18–31–01–01–0010, within Section 07, Township 31 South, Range 39 East, Volusia County, Florida. The project includes construction of a commercial center and the associated infrastructure, and landscaping. The applicant proposes to mitigate for the take of the Florida scrub-jay through the deposit of good funds in the amount of $113,776.64 to the Nature Conservancy's Conservation Fund, for the management and conservation of the Florida scrub-jay based on Service Mitigation Guidelines.

## Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the ITP is a "low-effect" project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

## Next Steps

We will evaluate the plan and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue ITP #TE35022A–0. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue the permit to the applicant.

## Public Comments

If you wish to comment on the permit application, plan, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

## Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: February 15, 2011.

**David L. Hankla,**

*Field Supervisor, Jacksonville Field Office.*

[FR Doc. 2011–3935 Filed 2–18–11; 8:45 am]

**BILLING CODE 4310–55–P**

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# DEPARTMENT OF THE INTERIOR

## Geological Survey

**[USGS–GX11LR000F60100]**

## Agency Information Collection Activities: Comment Request for the Ferrous Metals Surveys (17 Forms)

**AGENCY:** U.S. Geological Survey (USGS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (1028–0068).

**SUMMARY:** We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. This collection consists of 17 forms. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on May 31, 2011.

**DATES:** To ensure that your comments on this IC are considered, we must receive them on or before April 25, 2011.

**ADDRESSES:** Please submit a copy of your comments to Phadrea Ponds,

Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9445 (phone); 970–226–9230 (fax); or *pondsp@usgs.gov* (e-mail). Please reference Information Collection 1028–0068 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Carleen Kostick at 703–648–7940 (telephone); *ckostick@usgs.gov* (e-mail); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Respondents use these forms to supply the USGS with domestic consumption data of 13 ores, concentrates, metals, and ferroalloys, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

**II. Data**

*OMB Control Number:* 1028–0068.
*Form Number:* Various (17 forms).
*Title:* Ferrous Metals Surveys.
*Type of Request:* Extension of a currently approved collection.
*Affected Public:* Private sector: U.S. nonfuel minerals producers of ferrous and related metals.
*Respondent Obligation:* Voluntary.
*Frequency of Collection:* Monthly and annually.
*Estimated Number of Annual Responses:* 3,201.
*Annual Burden Hours:* 1,660 hours. We expect to receive 3,201 annual responses. We estimate an average of 10 minutes to 1 hour per response.
*Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:* We have not identified any "non-hour cost" burdens associated with this collection of information.
*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

**III. Request for Comments**

We invite comments concerning this IC 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) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

*USGS Information Collection Clearance Officer:* Phadrea Ponds 970–226–9445.

Dated: February 10, 2011

**John H. DeYoung, Jr.,**

*Director, National Minerals Information Center, U.S. Geological Survey.*

[FR Doc. 2011–3820 Filed 2–18–11; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II

Notice is hereby given that, on January 19, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II ("HEDGE II") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chrysler Group, LLC, Auburn Hills, MI, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE II intends to file additional written notifications disclosing all changes in membership.

On February 19, 2009, HEDGE II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 2009 (74 FR 15003)

The last notification was filed with the Department on November 4, 2010. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act December 17, 2010 (75 FR 79024)

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2011–3857 Filed 2–18–11; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act Of 1993—OpenSAF Foundation

Notice is hereby given that, on January 19, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), OpenSAF Foundation ("OpenSAF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, MontaVista Software LLC, Santa Clara, CA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenSAF intends to file additional written notifications disclosing all changes in membership.

On April 8, 2008, OpenSAF filed its original notification I pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 16, 2008 (73 FR 28508).

The last notification was filed with the Department on March 11, 2010. A notice was published in the **Federal**

**Register** pursuant to Section 6(b) of the Act April 16, 2010 (75 FR 20002).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2011–3855 Filed 2–18–11; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Marinenet, LLC

Notice is hereby given that, on January 13, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), MarineNet, LLC ("MarineNet") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ACL Transportation Services LLC, Jeffersonville, IN; Ingram Barge Company, Nashville, TN; and AEP River Operations LLC, Chesterfield, MO. The general area of MarineNet's planned activity is researching, evaluating, testing and developing a process or service to establish and support a platform for the electronic transfer of data between contracting river industry trading partners (the "value added network" or "VAN"). The VAN will provide for the ability to electronically transmit order, status, and invoice information between contracting river trading partners internal systems, promoting efficiency within the river industry.

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2011–3854 Filed 2–18–11; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Halon Alternatives Research Corporation, Inc.

Notice is hereby given that, on January 18, 2011, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Halon Alternatives Research Corporation, Inc. ("HARC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Gielle di Luigi Galantucci, Altarnura, ITALY; Global Safety Labs, Tulsa, OK; Minimax USA, Inc., Mesa, AZ; N2 Towers, Belleville, Ontario, CANADA; and Orr Protection Systems, Louisville, KY, have been added as parties to this venture. Also, Aerojet, Rocket Research Company, Redmond, WA; Chemetron Fire Systems, Matteson, IL; Chemtura Corporation, Middlebury, CT; and Fireline Corporation, Baltimore, MD, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HARC intends to file additional written notifications disclosing all changes in membership.

On February 7, 1990, HARC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 1990 (55 FR 8204).

The last notification was filed with the Department on March 8, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 10, 2006 (71 FR 27278)

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2011–3853 Filed 2–18–11; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[OMB Number 1117–0031]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration Under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration Under Domestic Chemical Diversion Control Act of 1993 DEA Forms 510 & 510A

**ACTION:** 60-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 25, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152 on 202–307–7297 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—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.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993 DEA Forms 510 & 510A.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* DEA Forms 510 and 510a. *Component:* Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:* The Domestic Chemical Diversion Control Act requires that manufacturers, distributors, importers, and exporters of List I chemicals which may be diverted in the United States for the production of illicit drugs must register with DEA. Registration provides a system to aid in the tracking of the distribution of List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

| | Respondents | Burden (minutes) | Total hour burden | @ $50.14/hour = |
|---|---|---|---|---|
| DEA–510 (paper) | 12 | 0.5 hours | 6 hours | 300.84 |
| DEA–510 (electronic) | 112 | 0.25 hours | 28 hours | 1,403.92 |
| DEA–510a (paper) | 165 | 0.5 hours | 82.5 hours | 4,136.55 |
| DEA–510a (electronic) | 949 | 0.25 hours | 237.25 hours | 11,895.72 |
| Total | 1,238 | | 353.75 hours | 17,737.03 |

Total percentage electronic: 85.7%

(6) *An estimate of the total public burden (in hours) associated with the collection:* 353.75 annual burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 15, 2011.

**Lynn Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2011–3797 Filed 2–18–11; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OMB Number 1121–NEW]**

### Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review; Proposed New Information Collection Activity; Comment Request, Proposed Project entitled "Violence and Victimization Experiences of Indian Women Living in Tribal Communities".

The Department of Justice (DOJ), National Institute of Justice (NIJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until April 25, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Crossland, National Institute of Justice, 810 Seventh Street, NW., Washington, DC 20531 (overnight 20001).

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Christine Crossland on (202) 616–5166 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—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.

*Overview of this information collection:*

(1) *Type of Information Collection:* Survey.

(2) *The title of the Form/Collection:* Violence and Victimization Experiences

of Indian Women Living in Tribal Communities Study.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* American Indian and Alaska Native women living on tribal reservations and in Alaska Native communities who are 18 years or older.

*Abstract:* Violence Against Women Act of 2005, Public Law 109–162, Title IX, Section 904(a) mandates that the United States Department of Justice conduct a comprehensive study of violence against American Indian and Alaska Native women living on tribal reservations and in Alaska Native villages. As part of that program of research, NIJ is undertaking a preliminary study known as the Violence Against Indian Women (VAIW) prevalence study, with the following objectives:

(a) Create and pilot test a survey instrument that captures valid, reliable data on the nature and extent of intimate partner violence, sexual violence, and stalking committed against American Indian and Alaska Native women; and

(b) Develop a study methodology, including sampling strategy and data collection approach that enables the safe collection of meaningful, standardized data.

This will be a one-time information collection and is expected to take approximately two months from the time the first participant is enrolled until the last survey is administered. At the end of this project, NIJ will have the knowledge, tools, experience, and methods to coordinate and field a larger study as mandated by Congress. The VAIW prevalence project will ensure that the survey instrument and approach used for NIJ's planned data collection are methodologically rigorous and fully responsive to Congressional mandate and to the needs of American Indian and Alaska Native communities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 225 respondents will complete the survey within 1 hour.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 225 total annual burden hours associated with this collection.

If additional information is required contact: Department Clearance Officer for PRA, Lynn Murray, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 15, 2011.

**Lynn Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2011–3802 Filed 2–18–11; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection, Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension without change of a currently approved collection for the "Producer Price Index" survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 25, 2011.

**ADDRESSES:** Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (*See* **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Producer Price Index (PPI), one of the Nation's leading economic indicators, is used as a measure of price movements, as an indicator of inflationary trends, for inventory valuation, and as a measure of purchasing power of the dollar at the primary-market level. It also is used for market and economic research and as a basis for escalation in long-term contracts and purchase agreements.

Producer Price Index data provide a description of the magnitude and composition of price change within the economy, and serve a wide range of governmental needs. This family of indexes are closely followed, monthly statistics which are viewed as sensitive indicators of the economic environment. Price data are vital in helping both the President and Congress set fiscal-spending targets. Producer prices are monitored by the Federal Reserve Board Open Market Committee to help decide monetary policy. Federal policy-makers at the Department of Treasury and the Council of Economic Advisors utilize these statistics to help form and evaluate monetary and fiscal measures and to help interpret the general business environment. In addition, it is common to find one or more PPIs, alone or in combination with other measures, used to escalate the delivered price of goods for government purchases.

In addition to governmental uses, PPI data are regularly put to use by the private sector. Private industry uses PPI data for contract escalation. For one particular method of tax-related Last-In-First-Out (LIFO) inventory accounting, the Internal Revenue Service suggests that firms use PPI data for making calculations. Private businesses make extensive use of industrial-price data for planning and operations. Price trends are used to assess the condition of markets. Firms commonly compare the prices they pay for material inputs as well as prices they receive for products that they make and sell with changes in similar PPIs.

Economic researchers and forecasters also put the PPI to regular use. PPIs are widely used to probe and measure the interaction of market forces. Some examples of research topics that require extensive price data include: The identification of varying price elasticities and the degree of cost pass-through in the economy, the identification of potential lead and lag structures among price changes, and the identification of prices which exert major impacts throughout market structures.

## II. Current Action

Office of Management and Budget clearance is being sought for the Producer Price Index survey.

The PPI collection is not a one-time project with an end date. The purpose of the PPI collection is to accumulate data for the ongoing, monthly publication of the PPI family of indexes. The Bureau of Labor Statistics must continue collecting data for the PPI since both policy and business planning are affected by the completeness of the description of price trends. Dollar-denominated measures of economic performance, such as Gross Domestic Product, require accurate price data in order to convert nominal to constant-dollar values. Inflation-free national income accounting figures are vital to fiscal and monetary policy-makers when setting objectives and targets. It is conservatively estimated that hundreds-of-billions of dollars worth of contracts and purchase agreements employ PPIs as part of price-adjustment clauses. Failure to calculate data would tend to extend the time frame required for accurate recognition of and appropriate adaptation to economic events.

## III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Type of Review:* Extension without change of a currently approved collection

*Agency:* Bureau of Labor Statistics.

*Title:* Producer Price Index Survey.

*OMB Number:* 1220–0008.

*Affected Public:* Private Sector.

| Form | Total respondents | Frequency | Total responses | Average time per response (min) | Estimated total burden (hrs) |
|---|---|---|---|---|---|
| BLS 1810A, A1, B, C, C1, and E | 6,582 | once | 6,582 | 120 | 13,164 |
| BLS 473P | 26,250 | monthly | *1,260,000 | 18 | 378,000 |
| Totals | 32,832 | | 1,266,582 | | 391,164 |

*For monthly repricing, an average of 4 forms are sent to each respondent or on average PPI requests repricing of 105,000 items each month.

*Total Burden Cost (capital/startup):* $0

*Total Burden Cost (operating/maintenance):* $0

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

Signed at Washington, DC, this 10th day of February 2011.

**Kimberley D. Hill,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 2011–3833 Filed 2–18–11; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0028]**

### Grain Handling Facilities; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Grain Handling Facilities (29 CFR 1910.272).

**DATES:** Comments must be submitted (postmarked, sent, or received) by April 25, 2011.

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

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2011–0028, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2011–0028). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments *see* the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance,

OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies a number of paperwork requirements. The following sections describe who uses the information collected under each requirement as well as how they use it. The purpose of the requirements is to reduce employees' risk of death or serious injury while working in grain handling facilities.

Paragraph (d) of the Standard requires the employer to develop and implement an emergency action plan so that employees will be aware of the appropriate actions to take in the event of an emergency.

Paragraph (e)(1) requires that employers provide training to employees at least annually and when changes in job assignment will expose them to new hazards.

Paragraph (f)(1) requires the employer to issue a permit for all hot work. Under paragraph (f)(2) the permit shall certify that the requirements contained in 1910.272(a) have been implemented prior to beginning the hot work operations and shall be kept on file until completion of the hot work operation.

Paragraph (g)(1)(i) requires the employer to issue a permit for entering bins, silos, or tanks unless the employer or the employer's representative is present during the entire operation. The permit shall certify that the precautions contained in paragraph (g) have been implemented prior to employees entering bins, silos or tanks and shall be kept on file until completion of the entry operations.

Paragraph (g)(1)(ii) requires that the employer deenergize, disconnect, lockout and tag, block-off or otherwise prevent operation of all mechanical, electrical, hydraulic, and pneumatic equipment which presents a danger to employees inside grain storage structures.

Paragraphs (i)(1) and (i)(2) require the employer to inform contractors performing work at the grain handling facility of known potential fire and explosion hazards related to the contractor's work and work area and to explain to the contractor the applicable provisions of the emergency action plan.

Paragraph (j)(1) requires the employer to develop and implement a written housekeeping program that establishes the frequency and method(s) determined best to reduce accumulations of fugitive grain dust on ledges, floors, equipment, and other exposed surfaces.

Under paragraph (m)(1), the employer is required to implement preventive maintenance procedures consisting of regularly scheduled inspections of at least the mechanical and safety control equipment associated with dryers, grain stream processing equipment, dust collection equipment including filter collectors, and bucket elevators. Paragraph (m)(3) requires a certification be maintained of each inspection. Paragraph (m)(4) requires the employer to implement procedures for the use of tags and locks which will prevent the inadvertent application of energy or motion to equipment being repaired, serviced, or adjusted.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Grain Handling Facilities (29 CFR 1910.272). The Agency is requesting to reduce its current burden hour estimate associated with this Standard from 70,355 hours to 68,762 hours for a total reduction of 1,593 hours. This adjustment decrease (based on new data obtained by the Agency) is a result of a decline in the number of grain elevators and mills from 19,791 to 19,121. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Grain Handling Facilities Standard (29 CFR 1910.272).

*OMB Number:* 1218–0206.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 18,804.

*Total Responses:* 1,312,126.

*Estimated Time per Response:* Varies from 1 minute (.02 hour) to maintain certification records to 3 hours to modify action plans/housekeeping programs/tag and lock procedures.

*Total Burden Hours:* 68,762.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0028). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about

security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on February 16, 2011.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2011–3877 Filed 2–18–11; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0008]**

### Standard on Commercial Diving Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Commercial Diving Operations Standard (29 CFR part 1910, subpart T).

**DATES:** Comments must be submitted (postmarked, sent, or received) by April 25, 2011.

**ADDRESSES:**

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

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0008, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2011–0008). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments *see* the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657). Subpart T applies to diving and related support operations conducted by employers involved in general industry, construction, ship repairing, shipbuilding, shipbreaking, and longshoring, and specifies equipment and procedures that prevent injury and death among workers exposed to hazards associated with diving and diving support operations.

Subpart T contains a number of paperwork requirements. The following paragraphs describe these requirements.

*Section 1910.401(b).* Allows employers to deviate from the requirements of the Subpart to the extent necessary to prevent or minimize a situation that is likely to cause death, serious physical harm, or major environmental damage (but not situations in which purely economic or property damage is likely to occur). They must notify the OSHA Area Director within 48 hours of taking such action; this notification must describe the situation responsible for the deviation and the extent of the deviation from the requirements. On request of the Area Director, employers must submit this information in writing.

*Sections 1910.410(a)(3) and (a)(4).* Paragraph (a)(3) requires employers to train all dive team members in cardiopulmonary resuscitation and first aid (*i.e.,* the American Red Cross

standard course or equivalent), while paragraph (a)(4) specifies that employers train dive team members exposed to hyperbaric conditions, or who control exposure of other employees to such conditions, in diving-related physics and physiology.

*Sections 1910.420(a).* Under paragraph (a), employers must develop and maintain a safe practices manual and make it available to each dive team member at the dive location. In addition, for each diving mode used at the dive location, the manual must contain: Safety procedures and checklists for diving operations; assignments and responsibilities of the dive team members; equipment procedures and checklists; and emergency procedures for fire, equipment failures, adverse environmental conditions, and medical illness and injury.

*Section 1910.421(b).* Under this provision, employers are to keep at the dive location a list of telephone or call numbers for the following emergency facilities and services: An operational decompression chamber (if such a chamber is not at the dive location); accessible hospitals; available physicians and means of emergency transportation; and the nearest U.S. Coast Guard Rescue Coordination Center.

*Section 1910.421(f).* Requires employers to brief dive team members on the diving-related tasks they are to perform, safety procedures for the diving mode used at the dive location, any unusual hazards or environmental conditions likely to affect the safety of the diving operation, and any modifications to operating procedures necessitated by the specific diving operation. Before assigning diving-related tasks, employers must ask each dive team member about their current state of physical fitness, and inform the member about the procedure for reporting physical problems or adverse physiological effects during and after the dive.

*Section 1910.421(h).* If the diving operation occurs in an area capable of supporting marine traffic and occurs from a surface other than a vessel, employers are to display a rigid replica of the international code flag "A" that is at least one meter in height so that it is visible from any direction; the employer must illuminate the flag during night diving operations.

*Section 1910.422(e).* Employers must develop and maintain a depth-time profile for each diver that includes, as appropriate, any breathing gas changes or decompression.

*Sections 1910.423(b)(1)(ii) through (b)(2).* Requires the employer to: Instruct the diver to report any physical symptoms or adverse physiological effects, including symptoms of decompression sickness (DCS); advise the diver of the location of a decompression chamber that is ready for use; and alert the diver to the potential hazards of flying after diving. For any dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, the employer must also inform the diver to remain awake and in the vicinity of the decompression chamber that is at the dive location for at least one hour after the dive or any decompression or treatment associated with the dive.

*Section 1910.423(d).* Paragraph (d)(1) specifies that employers are to record and maintain the following information for each diving operation: The names of dive-team members; date, time, and location; diving modes used; general description of the tasks performed; an estimate of the underwater and surface conditions; and the maximum depth and bottom time for each diver. In addition, for each dive outside the no-decompression limits, deeper than 100 feet, or that uses mixed gas in the breathing mixture, paragraph (d)(2) requires the employer to record and maintain the following information for each diver: Depth-time and breathing gas profiles; decompression table designation (including any modifications); and elapsed time since the last pressure exposure if less than 24 hours or the repetitive dive designation. Under paragraph (d)(3), if the dive results in DCS symptoms, or the employer suspects that a diver has DCS, the employer must record and maintain a description of the DCS symptoms (including the depth and time of symptom onset) and the results of treatment.

*Section 1910.423(e).* Requires employers to assess each DCS incident by: Investigating and evaluating it based on the recorded information, consideration of the past performance of the decompression profile used, and the diver's individual susceptibility to DCS; taking appropriate corrective action to reduce the probability of a DCS recurrence; and, within 45 days of the DCS incident, preparing a written evaluation of this assessment, including any corrective action taken.

*Sections 1910.430(a), (b)(4), (c)(1)(ii), (c)(3)(i), (f)(3)(ii), and (g)(2). Description of the requirements.* Paragraph (a) contains a general requirement that employers must record by means of tagging or a logging system any work performed on equipment, including any modifications, repairs, tests, calibrations, or maintenance performed on the equipment. This record is to include a description of the work, the name or initials of the individual who performed the work, and the date they completed the work.

Paragraphs (b)(4) and (c)(1)(iii) require employers to test two specific types of equipment, including, respectively: The output of air compressor systems used to supply breathing air to divers for air purity every six months by means of samples taken at the connection to the distribution system; and breathing-gas hoses at least annually at one and one-half times their working pressure. Under paragraph (c)(3)(i), employers must mark each umbilical (*i.e.,* separate lines supplying air and communications to a diver, as well as a safety line, tied together in a bundle), beginning at the diver's end, in 10-foot increments for 100 feet, then in 50-foot increments. Paragraph (f)(3)(ii) mandates that employers regularly inspect and maintain mufflers located in intake and exhaust lines on decompression chambers. According to paragraph (g)(2), employers are to test depth gauges using dead-weight testing, or calibrate the gauges against a master reference gauge; such testing or calibration is to occur every six months or if the employer finds a discrepancy larger than two percent of the full scale between any two equivalent gauges. Employers must make a record of the tests, calibrations, inspections, and maintenance performed on the equipment specified by these paragraphs in accordance with section 1910.430(a).

*Sections 1910.440(a)(2) and (b).* Under paragraph (a)(2) of this provision, employers must record any diving-related injuries or illnesses that result in a dive-team member remaining in hospital for at least 24 hours. This record is to describe the circumstances of the incident and the extent of any injuries or illnesses.

Paragraph (b) of this provision regulates the availability of the records required by the Subpart, including who has access to these records, the retention periods for various records, and, in some cases, the final disposition of the records. Under paragraph (b)(1), employers must make any record required by the subpart available, on request, for inspection and copying to an OSHA compliance officer or to a representative of the National Institute for Occupational Safety and Health (NIOSH). Paragraph (b)(2) specifies that employers are to provide workers, their designated representatives, and OSHA compliance officers with exposure and

medical records generated under the Subpart in accordance with § 1910.1020 ("Access to employee exposure and medical records"); these records include safe practices manuals, depth-time profiles, diving records, DCS incident assessments, and hospitalization records. This paragraph also mandates that employers make equipment inspection and testing records available to employees and their designated representative on request.

According to paragraph (b)(3), employers must retain these records for the following periods: Safe practices manuals, current document only; depth-time profiles, until completing the diving record or the DCS incident assessment; diving records, one year, except five years if a DCS incident occurred during the dive; DCS incident assessments, five years; hospitalization records, five years; and equipment inspections and testing records, current tag or log entry until the employer removes the equipment from service. Paragraphs (b)(4) and (b)(5) specify the requirements for disposing of these records. Under paragraph (b)(4), employers are to forward any record with an expired five-year retention period to NIOSH. Paragraph (b)(5) states that employers who cease to do business must transfer records without unexpired retention dates to the successor employer who will retain them for the required period; however, if the employers cease to do business without a successor employer, they must transfer the records to NIOSH.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Commercial Diving Operations (29 CFR part 1910, subpart T). The Agency is requesting a 1,774 decrease in burden hours from the current level of 205,397 hours to 203,623 hours. This request is being made due to an overall decrease in the number of facilities affected by the Standard.

*Type of Review:* Extension of a currently approved collection.

*Title:* Standard on Commercial Diving Operations (29 CFR part 1910, subpart T).

*OMB Number:* 1218–0069.

*Affected Public:* Business or other for-profits; Not-for-profit institutions; Federal Government; State, Local or Tribal Governments.

*Number of Respondents:* 2,500.

*Frequency:* On Occasion; Annually.

*Total Responses:* 3,969,219.

*Average Time per Response:* Varies from 3 minutes (.05 hour) to replace the safe practices manual to 1 hour to develop a new manual.

*Estimated Total Burden Hours:* 203,623.

*Estimated Cost (Operation and Maintenance):* $2,480.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2011–0008). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC on February 16, 2011.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2011–3874 Filed 2–18–11; 8:45 am]

BILLING CODE 4510–26–P

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# OFFICE OF MANAGEMENT AND BUDGET

## Agency Information Collection Activities: Proposed Collection; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; Correction

**AGENCY:** Office of Management and Budget (OMB).

**ACTION:** Correction.

**SUMMARY:** This document corrects errors that appeared in the **Federal Register** on December 22, 2010, entitled "Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery."

**FOR FURTHER INFORMATION CONTACT:** *ServiceDeliveryComments@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** In notice document 2010–002 on page 80542 in the issue of Wednesday, December 22, 2010, make the following correction:

On page 80542, in the third column, beginning with "The following agencies

are planning to submit this collection to OMB for approval * * *," the following agencies shall be included: General Services Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, and U.S. Agency for International Development. Due to an oversight, those agencies were inadvertently omitted. All Chief Financial Officers Act agencies should have been included in the joint notice.

**Shelley Metzenbaum,**

*Associate Director for Performance and Personnel Management.*

[FR Doc. 2011–3819 Filed 2–18–11; 8:45 am]

**BILLING CODE 3110–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

**NOTICE:** [11–017].

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 60 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, Acting NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, (202) 358–1351, *Frances.C.Teel@nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

LaRC leadership desires to seek out customer feedback across all mission areas they support in order to determine, from an integrated perspective, those areas where NASA may need to take systemic action to improve the technical quality and/or the delivery of our products and services.

### II. Method of Collection

We intend to introduce the survey by initially by letter; however, customers will have the option to provide their feedback via e-mail, Web-based survey, or phone conversation in accordance with their preference.

### III. Data

*Title:* LaRC Customer Satisfaction Assessment

*OMB Number:* 2700–XXXX

*Type of review:* New Collection

*Affected Public:* Individuals or households

*Estimated Number of Respondents:* 30

*Estimated Number of Responses per Respondent:* 1

*Estimated Time per Response:* 30 minutes

*Estimated Total Annual Burden Hours:* 15 hours

*Estimated Annual Cost for Respondents:* $53.00

### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

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

**Frances Teel,**

*Acting NASA Clearance Officer.*

[FR Doc. 2011–3783 Filed 2–18–11; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (11–018)]**

### Notice of Intent To Grant a Partially Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant a partially exclusive license.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the invention described and claimed in United States Patent 7,509,774 (issued March 31, 2009) and NASA Case No. MSC 24201–1, entitled "Apparatus For Integrating A Rigid Structure Into A Flexible Wall Of An Inflatable Structure" to Bigelow Aerospace, having its principal place of business in North Las Vegas, Nevada. The fields of use may be limited to expandable spacecraft, vehicles, modules, and the like for operation in exoatmospheric space, including applications, sales, lease, and other commercial uses or applications thereof for research and development, space tourism, and other commercial endeavors. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** The prospective partially exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective license may be submitted to the Johnson Space Center (JSC) Patent Counsel, JSC Office of Chief Counsel, Mail Code AL, 2101 NASA Parkway, Houston, Texas 77058.

**FOR FURTHER INFORMATION CONTACT:** Theodore U. Ro, Patent Attorney, JSC Office of Chief Counsel, (281) 244–7148 (phone), (281) 483–6936 (fax), *theodore.u.ro@nasa.gov* (e-mail address). Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*

Dated: February 5, 2011.

**Richard W. Sherman,**

*Deputy General Counsel.*

[FR Doc. 2011–3781 Filed 2–18–11; 8:45 am]

BILLING CODE P

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Review; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until April 25, 2011.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

*Clearance Officer:* Tracy Sumpter, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax No. 703–837–2861, E-mail: *OCIOmail@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6440.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*OMB Number:* 3133–0121.

*Form Number:* 4063 and 4063a.

*Type of Review:* Reinstatement, without change, of a previously approved collection.

*Title:* Notice of Change of Official or Senior Executive Officer and Individual Application for Approval of Official or Senior Executive Officer.

*Description:* In order to comply with statutory requirements, the agency must obtain sufficient information from new officials or senior executives officers of troubled or newly chartered credit unions to determine their fitness for the position. These forms standardize the information gathered to evaluate the individual's fitness for the position. The format is similar to the one used by the FFIEC agencies and the FRB. 12 CFR 701.14 and 741.205.

*Estimated No. of Respondents/ Recordkeepers:* 650.

*Estimated Burden Hours per Response:* 2.0 hours.

*Frequency of Response:* Reporting and on occasion.

*Estimated Total Annual Burden Hours:* 1300.

*Estimated Total Annual Cost:* $ 0.

By the National Credit Union Administration Board on February 15, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–3792 Filed 2–18–11; 8:45 am]

BILLING CODE 7535–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0040]**

### Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 27, 2011, to February 10, 2011. The last biweekly notice was published on February 8, 2011 (76 FR 6830).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's

"Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the

document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

*Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of amendment request:* January 13, 2011.

*Description of amendment request:* The proposed amendment would modify the Facility Operating License (FOL) by deleting references to specific Safety Evaluation Reports (SER), Technical Specification (TS) Amendments, and Exemptions from License Condition 2.C(3), Fire Protection, and replacing them with the words "as supplemented." This is an administrative amendment to the FOL.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed FOL change is administrative and does not involve a plant or design function change. It has no effect on reactor operation or accident analyses, and thus, the proposed FOL change does not increase the probability or consequence of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed FOL change is administrative and does not involve a plant or design function change. Because the proposed amendment would not change the design, configuration, or method of operation of the plant, it would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed FOL change is administrative and does not involve a plant or design function change. No design or safety margin is involved. Therefore, the proposed change does not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Branch Chief:* Nancy L. Salgado.

*Entergy Nuclear Vermont Yankee (VY), LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* December 21, 2010.

*Description of amendment request:* The proposed amendment would revise Technical Specifications (TS) Section 3.6.A "Pressure and Temperature Limitation" to reflect the pressure and temperature (P–T) limits for the reactor coolant system through, approximately the end of the prospective 20-year

renewed license period, depending on the plant capacity factor.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change revises the period of applicability of the P–T limits. The technical bases for the new period of applicability have been previously reviewed and approved by the NRC as discussed in the submittal. Because the applicable regulatory requirements continue to be met, the change does not significantly increase the probability of any accident previously evaluated. The proposed change provides the same assurance of RPV integrity as previously provided.

The change will require that the reactor pressure vessel and interfacing coolant system continue to be operated within their design, operational or testing limits. Also, the change will not alter any assumptions previously made in evaluating the radiological consequences of accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not involve a modification of the design of plant structures, systems, or components. The change will not impact the manner in which the plant is operated and will not degrade the reliability of structures, systems, or components important to safety as equipment protection features will not be deleted or modified, equipment redundancy or independence will not be reduced, supporting system performance will not be affected and no severe testing of equipment will be imposed. No new failure modes or mechanisms will be introduced as a result of this proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Appendix G to 10 CFR 50 describes the conditions that require pressure-temperature (P–T) limits and provides the general bases for these limits. Operating limits based on the criteria of Appendix G, as defined by applicable regulations, codes and standards, provide reasonable assurance that non-ductile or rapidly propagating failure will not occur. The P–T limits are prescribed for all plant modes to avoid encountering pressure, temperature and temperature rate of change conditions that might cause undetected flaws to propagate and cause non-ductile failure of the reactor coolant pressure boundary. Calculation of P–T limits in accordance with the criteria of Appendix G to 10 CFR 50 and applicable regulatory requirements ensures that adequate margins of safety are maintained and there is no significant reduction in a margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There is no change or impact on any safety analysis assumption or in any other parameter affecting the course of an accident analysis supporting the basis of any Technical Specification. The proposed change does not involve any increase in calculated off-site dose consequences.

Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

*NRC Branch Chief:* Nancy Salgado.

*FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1 (PNPP), Lake County, Ohio*

*Date of amendment request:* December 15, 2010.

*Description of amendment request:* The proposed amendment would modify the requirements for testing control rod scram times following fuel movement within the reactor pressure vessel by incorporating Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) change traveler TSTF–222–A, Revision 1.

*Basis for proposed no significant hazards consideration determination:* As required by Title 10 of the *Code of Federal Regulations* (CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The control rod drive system is not an initiator to any accident sequence analyzed in the PNPP Updated Final Safety Analysis Report (USAR), including Appendix 15C, "Anticipated Transients Without Scram (ATWS)." The proposed TS changes improve existing surveillance requirements by eliminating unnecessary control rob scram time testing, while continuing to provide adequate assurance of control rod performance for those control rods in core cells in which fuel is moved or replaced, or control rod maintenance was performed.

Historically, testing results indicate the control rod drive system is highly reliable. Since the fall 1996 implementation of Improved Technical Specifications, during 6036 control rod tests covering all 177 control rods, only 7 control rod tests (0.12 percent) yielded results slower than the required insertion time limit, and no control rods were inoperable as a result of scream time testing. All seven slow insertion time test results have been attributed to control rod scream solenoid pilot valves (SSPVs). These seven slow tests occurred prior to May 1999, and prior to a control rod SSPV upgrade program during which all 177 SSPV's were replaced.

As such, this type of change does not affect initiators of analyzed events and does not affect the mitigation of any accidents or transients.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed TS changes do not involve a physical alteration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints affected by the changes at which protective or mitigative actions are initiated. The changes will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the USAR. This change does not alter assumptions made in the safety analysis and licensing basis. As such, no new failures modes are being introduced. Accordingly, the proposed changes do not create any new credible failure mechanisms, malfunction, or accident initiators not previously considered in PNPP design and licensing basis.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment. This request does not involve a change to the fuel cladding, the reactor coolant system, or the containment.

The proposed TS changes associated with TSTF–222–1 modify current frequency requirements for scram time testing control rods following refueling outages and for control rod requiring testing due to work

activities. Scram times for control rods not affected by fuel movement or control rod maintenance remain unaffected.

The proposed TS changes have no affect on any safety analysis assumptions or methods of performing safety analyses. The changes do not adversely affect system design or operational requirements, and the equipment continues to be tested in a manner and at a frequency necessary to provide confidence that the equipment can perform its intended safety functions.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop. A–GO–15, 76 South Main Street, Akron, OH 44308.

*NRC Branch Chief:* Robert D. Carlson.

*FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1 (PNPP), Lake County, Ohio*

*Date of amendment request:* December 15, 2010

*Description of amendment request:* The proposed amendment would revise the required testing frequency of Surveillance Requirement (SR) 3.1.4.2 from "120 days cumulative operation in MODE 1" to "200 days cumulative operation in MODE 1" by incorporating Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) change traveler TSTF–460, Revision 0.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

*NRC Branch Chief:* Robert D. Carlson.

*FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa*

*Date of amendment request:* October 15, 2010.

*Description of amendment request:* The proposed amendment would revise Operating License No. DPR–49 by modifying the License to delete the parent guarantee License Condition.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment is an administrative change deleting the parent guarantee License Condition, as well as other minor editorial changes in format. Deletion of this License Condition does not involve any modifications to the safety-related structures, systems or components (SSCs). Deletion of this License Condition will not alter previously evaluated Final Safety Analysis Report (FSAR) design basis accident analysis assumptions, add any accident initiators, or affect the function of the plant safety-related SSCs as to how they are operated, maintained, modified, tested, or inspected. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment only deletes the parent guarantee License Condition and makes other minor editorial changes. Deletion of this License Condition does not result in the need for any new or different FSAR design basis accident analysis. It does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. As a result, no new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment. Therefore, the proposed amendment does not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. The proposed amendment would not alter the way any safety-related SSC functions and would not alter the way the plant is operated. The amendment only involves deletion of the parent guarantee License Condition and minor editorial changes. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ms. Marjan Mashhadi, Florida Power & Light Company, 801 Pennsylvania Avenue, NW., Suite 220, Washington, DC 20004.

*NRC Branch Chief:* Robert J. Pascarelli.

*Indiana Michigan Power Company (the licensee), Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1 (DCCNP–1), Berrien County, Michigan*

*Date of amendment request:* December 16, 2010.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 4.2.1, adding Optimized ZIRLO ™ fuel rods to the fuel matrix in addition to Zircaloy or ZIRLO fuel rods that are currently in use. The proposed amendment would also add a Westinghouse topical report regarding Optimized ZIRLO ™ as reference 8 in TS 5.6.5.b, which lists the analytical methods used to determine the core operating limits.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change would allow the use of Optimized ZIRLO ™ clad nuclear fuel in the reactors. The NRC approved topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A "Optimized ZIRLO ™," prepared by Westinghouse Electric Company LLC (Westinghouse), addresses Optimized ZIRLO ™ and demonstrates that Optimized ZIRLO ™ has essentially the same properties as currently licensed ZIRLO ™. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO ™ fuel cladding has been shown to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Use of Optimized ZIRLO ™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A and CENPD–404–P–A demonstrated that the material properties of Optimized ZIRLO ™ are similar to those of standard ZIRLO ™. Therefore, Optimized ZIRLO ™ fuel rod cladding will perform similarly to those fabricated from standard ZIRLO ™, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO ™ are not significantly different from those of standard ZIRLO ™. Optimized ZIRLO ™ is expected to perform similarly to standard ZIRLO ™ for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference in Optimized ZIRLO ™ material properties relative to standard ZIRLO ™ could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO ™ properties will be performed prior to the use of fuel assemblies with fuel rods containing Optimized ZIRLO ™. These LOCA analyses will demonstrate that the acceptance criteria of 10 CFR 50.46 will be satisfied when Optimized ZIRLO ™ fuel rod cladding is implemented.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* James M. Petro, Jr., Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.

*NRC Branch Chief:* Robert J. Pascarelli.

*Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–220, Nine Mile Point Nuclear Station Unit 1 (NMP1), Oswego County, New York*

*Date of amendment request:* September 29, 2010.

*Description of amendment request:* The proposed amendment would revise the NMP1 Technical Specifications (TSs) Section 3/4.1.5, "Solenoid-Actuated Pressure Relief Valves (Automatic Depressurization System)," and 3/4.2.9, "Pressure Relief Systems—Solenoid-Actuated Pressure Relief Valves (Overpressurization)," to provide for an alternative means of testing the main steam electromatic relief valves (ERVs). Specifically, the proposed amendment would revise TS Surveillance Requirements (SRs) 4.1.5.a and 4.2.9.b to verify each ERV actuator strokes when manually actuated at least once each operating cycle. The functional testing requirements for the ERVs would be described in the Inservice Testing (IST) Program and controlled pursuant to TS Administrative Controls Section 6.5.4, "Inservice Testing Program." The proposed change would allow demonstration of the capability of the valves to perform their safety function without requiring the ERVs to be cycled with reactor steam pressure while installed in the plant.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment revises the TS Surveillance Requirements (SRs) to provide for an alternative means of testing the main steam ERVs. The ERVs perform automatic depressurization system (ADS) and overpressurization relief mode safety functions to mitigate the consequences of a small break loss of coolant accident (SBLOCA) and other accidents and transients. The ERVs are not considered an initiator for any accident previously evaluated except for the stuck-open ERV event, which is evaluated in Section XV–B.3.11 of the NMP1 Updated Final Safety Analysis Report (UFSAR). The proposed amendment would allow demonstration of the capability of the valves to perform their safety function through a series of tests, inspections, and maintenance activities without requiring the ERVs to be cycled with reactor steam pressure while installed in the plant, thereby eliminating the possibility of a stuck-open ERV event due to testing. Thus, the proposed amendment does not increase the probability of a stuck-open ERV event. The testing methodology, comprehensive inspections and preventive maintenance, and associated programmatic controls will provide an equivalent level of assurance that the ERVs are capable of performing their intended accident mitigation safety functions and, as such, will have no effect on the types or amounts of radiation released or the predicted offsite doses in the event of an accident. Accordingly, the proposed amendment does not alter the initial conditions, assumptions, or conclusions of any accident analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment does not affect the assumed accident performance of the ERVs, or of any plant structure, system, or component previously evaluated. The proposed amendment does not involve the

installation of new equipment, and installed equipment is not being operated in a new or different manner. The proposed amendment provides for an alternative means of testing the ERVs that does not involve opening the valves with reactor steam while installed in the plant. The alternative testing and associated programmatic controls will provide an equivalent level of assurance that the ERVs are capable of performing their accident mitigation safety functions. No setpoints are being changed that would alter the dynamic response of plant equipment. As such, the proposed amendment will not introduce any new failure modes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment provides for an alternative means of testing the ERVs, in that the testing requirements will be satisfied by a combination of required testing in accordance with the Inservice Testing Program (controlled in accordance with TS administrative controls) and the revised TS SRs. The proposed changes will provide a complete verification of the functional capability of the ERVs by performing a series of tests, inspections, and maintenance activities without opening the valves with reactor steam while installed in the plant. The alternative testing and associated programmatic controls will provide an equivalent level of assurance that the ERVs are capable of performing their intended accident mitigation safety functions. The proposed amendment does not affect the valve setpoints or adversely affect any other operational criteria assumed for accident mitigation. No changes are proposed that alter the setpoints at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation. Moreover, it is expected that the alternative testing methodology will increase the margin of safety by reducing the potential for ERV leakage resulting from testing the ERVs with reactor steam pressure while installed in the plant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Carey W. Fleming, Senior Counsel, Constellation Energy Nuclear Group, LLC, 100 Constellation Way, Suite 200C, Baltimore, MD 21202.

*NRC Branch Chief:* Nancy L. Salgado.

*Northern States Power Company—Minnesota, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota*

*Date of amendment request:* February 3, 2011.

*Description of amendment request:* The proposed amendments would revise the Technical Specification (TS) 3.8.1, "AC Sources—Operating", Surveillance Requirement 3.8.1.10 footnote, which concerns battery charger modifications to be installed during or prior to the Unit 1 2011 refueling outage. The proposed change will allow use of different battery charger modifications to those considered when the footnote was added to the TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

This license amendment request proposes to revise the footnote to the emergency diesel generator Technical Specification surveillance requirement for loss of offsite power with safety injection actuation. The proposed footnote revision removes some specific requirements for battery charger modifications but will continue to assure that the applicable emergency diesel generator and its associated battery charger perform their required safety functions.

The emergency diesel generators and their associated battery chargers are not accident initiators and therefore, these changes do not involve a significant increase [in] the probability of an accident.

The proposed changes to the Technical Specification footnote will assure that the emergency diesel generator and the associated battery charger continue to perform their required safety function. Since the emergency diesel generator and the associated battery charger will provide required electrical power as assumed in the accident analyses, the results of the previous accident analyses are not changed and the changes proposed in this license amendment request do not involve a significant increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

This license amendment request proposes to revise the footnote to the emergency diesel generator Technical Specification surveillance requirement for loss of offsite power with safety injection actuation. The proposed footnote revision removes some specific requirements for battery charger modifications but will continue to assure that the applicable emergency diesel generator and its associated battery charger perform their required safety functions.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. The proposed change does involve modification of plant battery chargers, however, failures of battery chargers has been previously considered and bounded by assuming one safety related train of equipment fails. The modified battery chargers do not create new failure modes or mechanisms and no new accident precursors are generated. Surveillance testing requirements for the emergency diesel generator and battery charger will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are functional.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

This license amendment request proposes to revise the footnote to the emergency diesel generator Technical Specification surveillance requirement for loss of offsite power with safety injection actuation. The proposed footnote revision removes some specific requirements for battery charger modifications but will continue to assure that the applicable emergency diesel generator and its associated battery charger perform their required safety functions.

The proposed Technical Specification footnote change does not affect the availability, operability, or performance of safety-related systems and components: The affected emergency diesel generator and its associated battery will continue to perform their safety functions. The ability of operable structures, systems, and components to perform their designated safety function is unaffected by this proposed change. The proposed change does not involve a significant reduction in a margin of safety because the proposed footnote changes do not reduce the margin of safety that exists in the present Technical Specifications or Updated Safety Analysis Report. The operability requirements of the Technical Specifications are consistent with the initial condition assumptions of the safety analyses and the surveillance testing requirements will continue to demonstrate the operability of the emergency diesel generator.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401

*NRC Branch Chief:* Robert J. Pascarell.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* November 10, 2010.

*Description of amendment request:* The change to the PPL Susquehanna, LLC (PPL) Unit 1 and Unit 2 Technical Specification (TS) Surveillance Requirement (SR) 3.4.3.1 "Safety/Relief Valves (S/RVs)" proposes a new safety function lift setpoint lower tolerance for the S/RVs. The proposed change will revise the lower tolerances from −3% to −5%. This change would be limited to the lower tolerances and does not affect the upper tolerances. This change only applies to the lower as-found tolerance and not to the as-left tolerance, which will remain unchanged at ±1% of the safety lift setpoint. The as-found tolerances are used for determining past operability and to increase sample sizes for S/RV testing should the upper tolerance be exceeded. There will be no revision to the actual setpoints of the valves installed in the plant due to this change.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

This change has no influence on the probability or consequences of any accident previously evaluated. The lower setpoint tolerance change does not affect the operation of the valves and it does not change the as-left setpoint tolerance. The change only affects the lower tolerance for opening the valve and does not change the upper tolerance, which is the limit that protects from overpressurization.

The proposed action does not involve physical changes to the valves, nor does it change the safety function of the valves. The proposed TS revision involves no significant changes to the operation of any systems or components in normal or accident operating conditions and no changes to existing structures, systems, or components.

The proposed action does not change any other behavior or operation of any S/RVs, and, therefore, has no significant impact on reactor operation. It also has no significant impact on response to any perturbation of reactor operation including transients and accidents previously analyzed in the Final Safety Analysis Report (FSAR).

Therefore, the proposed amendment does not result in a significant increase in the probability or consequences of any previously evaluated accident.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed lower setpoint tolerance change only affects the criteria to determine when an as-found S/RV test is considered to be acceptable. This change does not affect the criteria for the upper setpoint tolerance.

The proposed lower setpoint tolerance change does not adversely affect the operation of any safety-related components or equipment. Since the proposed action does not involve hardware changes, significant changes to the operation of any systems or components, nor change to existing structures, systems, or components, there is no possibility that a new or different kind of accident is created.

The proposed change does not involve physical changes to the S/RVs, nor does it change the safety function of the S/RVs. The proposed change does not require any physical change or alteration of any existing plant equipment. No new or different equipment is being installed, and installed equipment is not being operated in a new or different manner. There is no alteration to the parameters within which the plant is normally operated. This change does not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alterations in the procedures that ensure the plant remains within analyzed limits are being proposed, and no changes are being made to the procedures relied upon to respond to an off-normal event as described in the FSAR. As such, no new failure modes are being introduced. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed lower setpoint tolerance change only affects the criteria to determine when an as-found S/RV test is considered to be acceptable. This change does not affect the criteria for the upper setpoint tolerance. The TS setpoints for the S/RVs are not changed. The as-left setpoint tolerances are not changed by this proposed change.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Branch Chief* : Nancy L. Salgado.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia, and Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit 1 and 2, Appling County, Georgia*

*Date of amendment request:* December 16, 2010.

*Description of amendment request:* The proposed amendments would revise Technical Specification (TS) Section 2.0 "Safety Limits." Specifically, the removal of the requirement to report a Safety Limit Violation, that is redundant to existing regulations, Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50.36(c)(8) "Written Reports." The proposed change is described in Technical Specification Task Force Traveler TSTF–5–A, Revision 1, "Delete Safety Limit Violation Notification Requirements," (Agencywide Documents Access and Management System (ADAMS) Accession No. ML052010227), and was described in the Notice of Availability published in the **Federal Register** (FR) on November 4, 2005 (70 FR 67202). The proposed changes are consistent with the NRC-approved TSTF–5–A, Revision 1.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to remove the duplicative safety limit reporting, notification, and restart constraint requirements from the TS does not affect the plant or operation of the plant. The change simply removes duplicative information from the TS that is covered in the NRC regulations. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

*Response:* No.

The proposed change to remove the duplicative safety limit reporting, notification, and restart constraint requirements from the TS does not introduce any new accident scenarios, failure mechanisms, or limiting single failures. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed change has no adverse effect on any safety-related system or component and does not challenge the performance or integrity of any safety related system. This change is considered an administrative action to remove duplicative reporting, notification, and restart constraint requirements. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes are administrative and do not involve any reduction in a margin of safety. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed change has no adverse effect on any safety-related system or component and does not [involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

*NRC Branch Chief:* Gloria Kulesa.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

*Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin*

*Date of application for amendment:* July 28, 2009, and supplemented August 7, 2009, May 19, 2010, and August 12, 2010.

*Brief description of amendment:* The amendment revises the La Crosse Boiling Water Rector (LACBWR) Technical Specifications, in support of the dry cask storage project at LACBWR.

*Date of issuance:* January 25, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 71.

*Facility Operating License No. DPR–7:* This amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 6, 2009 (74 FR 51326).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 2011.

*No significant hazards consideration comments received:* No.

*Dominion Electric Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin*

*Date of application for amendment:* August 24, 2009 (Agencywide Documents and Management System (ADAMS) Accession No. ML092440398), as supplemented by letters dated October 22, 2009 (ADAMS Accession No. ML093070092), April 13, 2010 (ADAMS Accession Nos. ML101060517 and ML101040090), May 12, 2010 (ADAMS Accession No. ML101380399), July 1, 2010 (ADAMS Accession No. ML101890404), July 16, 2010 (ADAMS Accession No. ML102370370), August 18, 2010 (ADAMS Accession No. ML102371064), September 7, 2010 (ADAMS Accession No. ML102730383), September 8, 2010 (ADAMS Accession No. ML102580700), October 15, 2010 (ADAMS Accession No. ML102920037), and December 2, 2010 (ADAMS Accession No. ML103400328).

*Brief description of amendment:* This amendment converts the current technical specifications (CTSs) to the improved TSs (ITSs) and relocates certain requirements to other licensee-controlled documents. The ITSs are based on NUREG–1431, Rev. 3.0, "Standard Technical Specifications, Westinghouse Plants," Revision 3.0; "NRC Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors," dated July 22, 1993 (58 FR 39132); and 10 CFR 50.36, "Technical Specifications." Technical Specification Task Force changes were also incorporated. The purpose of the conversion is to provide clearer and more readily understandable requirements in the TSs for KPS to ensure safe operation. In addition, the amendment includes a number of issues that were considered beyond the scope of NUREG–1431.

*Date of issuance:* February 2, 2011.

*Effective date:* As of the date of issuance and shall be implemented on or before February 23, 2011.

*Amendment No.:* 207.

*Facility Operating License No. DPR–43:* Amendment revised the Technical Specifications and License.

*Date of initial notice in* **Federal Register:** December 15, 2009 (74 FR 66384). The supplements provided, contained clarifying information and did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 2, 2011.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan*

*Date of application for amendment:* January 27, 2010.

*Brief description of amendment:*

The amendment revises Section 2.E. of the Palisades Nuclear Plant (PNP) Renewed Facility Operating License to remove the name of the former operator of the plant in the title of the PNP physical security plan and replace it with Entergy Nuclear. The change also removes the security plan revision number and the date the plan was submitted to the Nuclear Regulatory Commission.

*Date of issuance:* January 25, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 241.

*Facility Operating License No. DPR–20:* Amendment revised the Technical Specifications.

*Public comments requested as to proposed no significant hazards considerations (NSHC):* The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

*Date of initial notice in* **Federal Register:** November 18, 2010 (75 FR 70708), followed by the repeat biweekly notice in the **Federal Register** on January 25, 2011 (76 FR 4389).

The Commission's related evaluation of the amendment, state consultation, and final NSHC determination are contained in a Safety Evaluation dated January 25, 2011.

*Attorney for licensee:* Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

*NRC Branch Chief:* Robert J. Pascarelli.

*Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts*

*Date of application for amendment:* January 24, 2010, as supplemented by letters dated September 7 and November 4, 2010.

*Brief description of amendment:* This amendment request would revise the Technical Specifications (TSs) Section 1.0, Definitions, TS Section 3.6, Primary System Boundary Specifications 3.6.A, and TS Programs and Manuals Section 5.5, to include reference to the Pressure and Temperature Limits Report (PTLR). The proposed PTLR would include revised 43 effective full-power years pressure-temperature curves, neutron fluence, and adjusted reference temperature values.

*Date of issuance:* January 26, 2011.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 234.

*Facility Operating License No. DPR–35:* The amendment revised the License and Technical Specifications.

*Date of initial notice in* **Federal Register:** April 6, 2010 (75 FR 17443). The supplemental letters dated September 7 and November 4, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 26, 2011.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* April 13, 2010 as supplemented by letter dated. February 2, 2011.

*Description of amendment request:* The amendment would revise Technical Specification (TS) to update the Table of Contents and the Applicability and Objective portions of TS 4.12 as a result of changes made by License Amendment Nos. 230 and 239 and to revise wording in TS 3.7.A.8. The changes are considered administrative in nature and do not materially change any technical requirement.

*Date of Issuance:* February 9, 2011.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 245.

*Facility Operating License No. DPR–28:* Amendment revised the License and Technical Specifications.

*Date of initial notice in* **Federal Register***:* June 29, 2010 (75 FR 37474). The supplement letter dated February 2, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 9, 2011.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* July 20, 2010.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 3.7.1.2, "Emergency Feedwater System," Limiting Condition for Operation (LCO) 3/4.7.1.2, "Emergency Feedwater," to clarify the acceptability of transitioning from Mode 4, Hot Shutdown, to Mode 3, Hot Standby, with the turbine-driven emergency feedwater (EFW) pump inoperable but available. The amendment granted an exception to TS LCO 3.0.4 and Surveillance Requirement 4.0.4 allowing entry into operational Mode 3 with TS LCO equipment, the turbine-driven EFW pump, associated with a shutdown action inoperable.

*Date of issuance:* January 31, 2011.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 230.

*Facility Operating License No. NPF–38:* The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in* **Federal Register***:* September 21, 2010 (75 FR 57523).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2011.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of amendment request:* February 4, 2010 as supplemented by letters

dated September 15, 2010, October 6, 2010, and December 13, 2010.

*Description of amendment request:* The proposed amendments would revise Technical Specification (TS) 3.3.6.1, "Primary Containment Isolation Instrumentation," "Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation," Function 6.a "Shutdown Cooling System Isolation, Recirculation Line Water Temperature—High," to enable implementation with reactor pressure-based isolation instrumentation, for the Dresden Nuclear Power Station, Units 2 and 3.

*Date of issuance:* February 7, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 236/229.

*Facility Operating License Nos. DPR–19 and DPR–25:* The amendment revised the Technical Specifications and License.

*Date of initial notice in* **Federal Register***:* April 20, 2010 (75 FR 20635).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 2011.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of application for amendments:* Dated October 5, 2009 as supplemented by letters dated June 10, November 23, December 14, and December 22, 2010, and January 11, 24, and 28, 2011.

*Brief description of amendments:* The proposed amendment would revise Technical Specification (TS) 4.3.1, "Criticality," to address a non-conservative TS. The proposed change addresses the Boraflex degradation issue in the LSCS Unit 2 spent fuel storage racks by revising TS Section 4.3.1 to allow the use of NETCO–SNAP–IN® rack inserts in LSCS Unit 2 spent fuel storage rack cells as a replacement for the neutron absorbing properties of the existing Boraflex panels.

*Date of issuance:* January 28, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 120 days after the end of Unit 2 refueling outage 13.

*Amendment Nos.:* 199 and 186.

*Facility Operating License Nos. NPF–11 and NPF–18:* The amendments revised the Technical Specifications and License.

*Date of initial notice in* **Federal Register***:* January 5, 2010 (75 FR 463). The June 10, November 23, December 14, and December 22, 2010, and January 11, 24, and 28, 2011, submittals contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2011.

*No significant hazards consideration comments received:* No.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio*

*Date of amendment request:* April 15, 2009, as supplemented by letters dated December 18, 2009, October 8, 2010 and January 10, 2011.

*Brief description of amendment request:* The amendment request and proposed exemption request were to incorporate a new methodology for the development of Reactor Coolant System (RCS) pressure-temperature limits into Technical Specification (TS) 5.6.4, "Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR)." The amendment also requested a revision to the period of validity of the analysis for the low temperature overpressure protection (LTOP) system contained in Operating License Condition 2.C(3)(d). An associated revision to the Technical Specification Basis 3.4.12 "Low Temperature Overpressure Protection (LTOP)" supports the change to the operating license condition.

*Date of issuance:* January 28, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 282.

*Facility Operating License No. NPF–3:* The amendment revised the TS and license.

*Date of initial notice in* **Federal Register***:* June 16, 2009 (72 FR 28577). The supplemental letters contained clarifying information, did not change the initial no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2011.

*No significant hazards consideration comments received:* No.

*Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York*

*Date of application for amendment:* December 9, 2009.

*Brief description of amendment:* The amendment changes the NMP2 Technical Specification (TS) 3.8.4, "DC Sources—Operating," to remove the Mode restrictions for performance of TS Surveillance Requirements (SRs) 3.8.4.7 and 3.8.4.8 for the Division 3 direct current (DC) electrical power subsystem battery. The Division 3 DC electrical power subsystem feeds emergency DC loads associated with the high-pressure core spray (HPCS) system. These surveillances verify that the battery capacity is adequate for the battery to perform its required functions. The amendment removes these Mode restrictions for the Division 3 battery, thereby allowing performance of the SRs during Mode 1, 2, or 3 in conjunction with scheduled HPCS system outages.

*Date of issuance:* January 31, 2011.

*Effective date:* As of the date of issuance to be implemented within 90 days.

*Amendment No.:* 136.

*Renewed Facility Operating License No. NPF–069:* The amendment revises the License and TSs.

*Date of initial notice in* **Federal Register**: April 6, 2010 (75 FR 17444).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 31, 2011.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of application for amendments:* February 2, 2010.

*Brief description of amendments:* The amendments revised the Technical Specifications (TSs) Table 3.3.1–1 "Reactor Trip System Instrumentation [RTS]," Function 3, "Power Range Neutron Flux High Positive Rate." Specifically, the revision added surveillance requirement 3.3.1.15 to verify the RTS response time is within limits.

*Date of issuance:* February 7, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 159 and 141.

*Facility Operating License Nos. NPF–68 and NPF–81:* Amendments revised the licenses and the TSs.

*Date of initial notice in* **Federal Register**: May 4, 2010 (75 FR 23817). The supplement dated October 29, 2010, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC

staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 7, 2011.

*No significant hazards consideration comments received:* No.

*Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia*

*Date of application for amendment:* March 30, 2010.

*Brief description of amendment:* The amendments revised the North Anna Technical Specifications (TSs) by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies."

*Date of issuance:* January 31, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 180 days from the date of issuance.

*Amendment Nos.:* 262 and 243.

*Renewed Facility Operating License Nos. NPF–4 and NPF–7:* Amendments changed the licenses and the technical specifications.

*Date of initial notice in* **Federal Register**: May 18, 2010 (75 FR 27833). The supplements dated August 30, 2010, and January 18, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 31, 2011.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 10th day of February 2011.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–3721 Filed 2–18–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 03034542; License No: 37–30412–01; EA–10–077; NRC–2011–0041]**

## In the Matter of Superior Well Services, Ltd. Indiana, PA; Confirmatory Order Modifying License (Effective Immediately)

### I

Superior Well Services, Ltd. (SWS or Licensee) is the holder of radioactive material License No. 37–30412–01 issued by the U.S. Nuclear Regulatory Commission (NRC or agency) pursuant to 10 CFR Part 30. The license authorizes the possession, storage, and use of radioactive sources for oil and gas well logging at the Licensee's facilities in Buckhannon, West Virginia, Sophia, West Virginia, and Gaylord, Michigan, and at temporary jobsites within the NRC's jurisdiction, in accordance with conditions specified therein.

### II

On October 21, 2010, the NRC issued a Notice of Violation (Notice) and Proposed Imposition of Civil Penalty (CP) in the amount of $34,000 for five violations that were categorized into two severity level (SL) III problems. The violations were identified during an NRC inspection as well as an investigation conducted by the NRC Office of Investigations (OI). (*Reference:* NRC Inspection Report No. 03034542/2009001 and OI Investigation Report No. 1–2009–035). The violations were also discussed at a predecisional enforcement conference (PEC) on September 2, 2010.

The first SL III problem described in the Notice related to an event that occurred on September 20, 2008, when two well-logging sealed sources fell off of a company truck during transport. One violation involved the failure to secure the packages containing the licensed material from shifting during transport. On September 20, 2008, when the truck transporting these sources reportedly hit a large pothole, the weld securing the source plate to the truck broke, and the sources fell off of the truck and remained unattended by the side of a public highway. The second violation involved the failure to control and maintain constant surveillance of the sources while they were on the highway (an unrestricted area). Since SWS did not recognize that the sources had fallen out of the truck until the truck reached its destination at the SWS facility in Buckhannon, WV, the sources remained unattended for approximately ninety minutes until SWS personnel located and retrieved the sources. The third violation involved the failure to immediately report this occurrence by telephone to the NRC Operations Center. The involved SWS employees, including the site Radiation Safety Officer (RSO) for the associated SWS facility, did not recognize the need to report this event to the NRC. As a result, SWS did not provide the required immediate telephone notification of this event to the NRC Operations Center until July 23, 2009, after an NRC inspector informed SWS of the reportability requirement while conducting a routine inspection.

The second SL III problem described in the Notice involved SWS's failure to conduct required radiological surveys of vehicles before transporting licensed material and the deliberate falsification of survey records for these vehicles. Specifically, former SWS employees informed the NRC inspector and investigator that on numerous occasions, they did not perform the surveys and they instead completed the survey forms by copying data from previously completed forms. The employees' failure to perform the required radiological surveys of vehicles prevented SWS from assuring that the dose rates inside and outside the trucks did not exceed limits set by the NRC and the U.S. Department of Transportation. The employees who admitted to the NRC that they had falsified survey records indicated that they did so because they did not know how to use the survey instruments.

### III

In response to the October 21, 2010, NRC letter, SWS requested the use of the NRC's Alternative Dispute Resolution (ADR) process to resolve differences it had with the NRC regarding the Notice. ADR is a process in which a neutral professional mediator with no decision-making authority assists the parties in reaching an agreement to resolve any differences regarding the enforcement action. On January 4, 2011, the NRC and SWS met in an ADR mediation session, arranged through Cornell University's Scheinman Institute on Conflict Resolution. During that ADR mediation session, an agreement in principle was reached. This Confirmatory Order is the result of that agreement, the elements of which consisted of the following:

1. SWS did not take issue with the NRC conclusion set forth in the October 21, 2010, letter and enclosed Notice that the subject violations regarding the temporary loss of two well-logging sources occurred as identified. Further, SWS did not take issue with the NRC

conclusion that the violations collectively warranted classification as an SL III problem and that SWS was subject to a civil penalty in accordance with the NRC Enforcement Policy, since the violations involved the loss of sealed sources.

2. Regarding the subject violations related to the failure to conduct radiological surveys, however, SWS maintained that the surveys were performed and that the employees who admitted to the NRC that they had falsified survey records did so because they were disgruntled after they had lost their jobs with SWS. Based upon the sworn testimony of the involved individuals, the NRC maintained that the former employees did not perform the surveys and that they created records indicating that the surveys had been performed when, in fact, they knew the surveys had not been performed. Although the NRC acknowledged that SWS management did not encourage or condone this practice, the NRC maintained that SWS was accountable because licensees are responsible for the actions of their employees. The NRC and SWS agreed to disagree on this violation.

3. The NRC acknowledged that SWS had taken several corrective actions in response to the violations, so as to preclude the occurrence of similar violations in the future. These actions include:

a. For the SL III Problem involving violations associated with the loss of radioactive material (RAM), SWS has:

i. Enhanced how the material is secured in company trucks during transport by welding the plate with the source holders to the truck frame, repairing the lock, and installing a heavy hasp lock to secure the door from opening during transport;

ii. Provided training on NRC notification requirements;

iii. Scheduled monthly conference calls with available site RSOs, Regional managers, and the Corporate RSO to discuss issues; and

iv. Replaced the Corporate RSO.

b. For the SL III Problem involving two violations associated with the failure to perform surveys, SWS has:

i. Increased focus on vehicle radiological surveys during initial and annual employee training, and required documentation of the completion of this training;

ii. Implemented random audits and observations of vehicle radiation surveys by SWS management;

iii. Developed job aids for SWS employees on the use of radiation survey meters; and

iv. Reinforced to staff that falsification of survey readings would not be tolerated.

4. The NRC also acknowledged that since the October 21, 2010, letter, SWS has independently taken additional actions to enhance safety both within the company and the industry. Those actions include

a. For the SL III Problem involving violations associated with the loss of RAM, SWS has:

i. Discussed this event, and the lessons learned, with management representatives from other oilfield services companies;

ii. Provided the details of this event to its radiological training contractors, Applied Health Physics (AHP), for inclusion as an example in its radiological training programs;

iii. Instituted the corrective actions implemented at SWS's Buckhannon, WV facility at its other locations (within both NRC and Agreement State jurisdictions) that utilize similar sources, as well as enhanced security measures at those sites that use only portable moisture density gauges;

iv. Instituted an audit protocol to be employed by the SWS Local Radiation Safety Officers (LRSOs), with oversight by the Health and Safety Engineers, to review the radiological safety programs and prevent recurrence of this type of violation;

v. Provided training to the LRSOs on the audit protocol described in Item III.4.a.iv; and

vi. Instituted a practice that the Facility Operations Managers at the SWS wireline locations will also fulfill the role of the LRSOs.

b. For the SL III Problem involving two violations associated with the failure to perform surveys, SWS has:

i. Instituted the practice of the LRSOs conducting random audits of completed surveys to verify the recorded values are reasonable.

5. SWS has also agreed to take additional actions to address the violations, to further enhance safety both within the company and the industry. These actions consist of:

a. For the SL III Problem involving violations associated with the loss of RAM, SWS agreed to:

i. Provide presentations that discuss this event and SWS's lessons learned and corrective actions at the following forums:

1. Pennsylvania Independent Oil and Gas Association;

2. Oilfield Safety Alliance;

3. Society of Petroleum Engineers;

ii. Submit an article discussing this event and SWS's lessons learned and corrective actions for consideration for publication in an Association of Energy Services Companies publication, a North American Transportation Management Institute publication, and the Applied Health Physics (AHP) newsletter; and

iii. Provide the details of this event to AHP for inclusion as an example in its training program, which is provided to AHP's other related clients.

b. For the SL III Problem involving two violations associated with the failure to perform surveys, SWS agreed to:

i. Modify its annual radiation training to emphasize that regulations and license conditions must be properly followed, including the requirements of providing complete and accurate information to the NRC (10 CFR 30.9) and the potential consequences that can occur to the company and to individuals who fail to comply; and

ii. Enhance the practice of the LSROs conducting random audits of completed surveys to verify the recorded values are reasonable (as discussed in Item III.4.b.i) by also periodically reviewing video footage of surveys being conducted.

6. SWS agreed to complete these actions within 90 days of the date of the Confirmatory Order confirming these commitments, and send the NRC Region I Regional Administrator a letter informing the NRC that the actions are complete, within 30 days of the completion of these actions.

7. In addition to the actions described above, SWS has instituted actions to enhance corporate safety culture. These include the implementation of anonymous employee safety concern feedback programs, routine employee observation tools, and other tools that promote employee responsibility for safety and empower employees to raise safety concerns on the jobsite.

8. In light of the actions that SWS has taken as described in Items 3, 4, and 6, as well as the additional actions SWS committed to take as described in Item 5, the NRC agreed to reduce the amount of the civil penalty to $17,000. SWS agreed to pay this amount within 30 days of the date of the Confirmatory Order confirming these commitments.

9. In accordance with NRC practice, the Confirmatory Order and the letter forwarding it to SWS will be publicly available and accompanied by a press release.

On February 4, 2011, SWS consented to issuance of this Order with the commitments, which are described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

**IV**

Since SWS has agreed to take additional actions to address NRC concerns, as set forth in Section III, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that SWS's commitments, as set forth in Section V, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have also determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and SWS's consent, this Order is immediately effective upon issuance.

**V**

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *It is hereby ordered, effective immediately that SWS shall:*

A. Within 30 days of the date of this order, pay a civil penalty of $17,000, utilizing one of the payment methods described in NUREG/BR–0254, "Payment Methods."

B. Within 90 days of the date of this order, complete the following actions:

1. For the SL III Problem involving violations associated with the loss of RAM, SWS will:

a. Provide presentations that discuss this event and SWS's lessons learned and corrective actions at the following forums:

i. Pennsylvania Independent Oil and Gas Association;

ii. Oilfield Safety Alliance;

iii. Society of Petroleum Engineers;

b. Submit an article discussing this event and SWS's lessons learned and corrective actions for consideration for publication in an Association of Energy Services Companies publication, a North American Transportation Management Institute publication, and the Applied Health Physics newsletter; and

c. Provide the details of this event to AHP for inclusion as an example in its training program, which is provided to AHP's other related clients.

2. For the SL III Problem involving two violations associated with the failure to perform surveys and creation of inaccurate survey records, SWS will:

a. Modify its annual radiation training to emphasize that regulations and license conditions must be properly followed, including the requirements of providing complete and accurate information to the NRC and maintaining records that are complete and accurate in all material respects (10 CFR 30.9) and the potential consequences that can occur to the company and to individuals who fail to comply; and

b. Enhance the practice of the LSROs conducting random audits of completed surveys to verify the recorded values are reasonable (as discussed in Item III.4.b.i) by also periodically reviewing video footage of surveys being conducted.

C. Within 30 days of completion of all of the actions described in Section V.B. of this Order, send the Regional Administrator, NRC Region I, a letter confirming that all actions are completed and describe details of their completion.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by SWS of good cause.

**VI**

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system

time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than SWS) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for a hearing shall not stay the immediate effectiveness of this order.

Dated this the 8th day of February 2011.

For the Nuclear Regulatory Commission.

**William M. Dean,**

*Regional Administrator, NRC Region I.*

[FR Doc. 2011–3851 Filed 2–18–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Digital Instrumentation & Control (DI&C); Revision to February 23, 2011, ACRS Meeting Federal Register Notice

The **Federal Register** Notice for the ACRS Subcommittee Meeting on Digital Instrumentation & Control (DI&C) scheduled to be held on February 23, 2011, is being revised to notify the following:

The meeting will be open to public attendance with exception of portions that may be closed to protect unclassified safeguards information or information that is proprietary to pursuant to 5 U.S.C. 552b(c)(3) and (4).

The notice of this meeting was previously published in the **Federal Register** on Friday, February 11, 2011, [75 FR 7882]. All other items remain the same as previously published.

Further information regarding this meeting can be obtained by contacting Christina Antonescu, Designated Federal Official (*Telephone:* 301–415–6792, *E-mail: Christina.Antonescu@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (ET).

Dated: *February 15, 2011.*

**Yoira Diaz-Sanabria,**

*Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2011–3852 Filed 2–18–11; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

**[OMB Control No. 3206–0190; Form RI 92–19]**

### Submission for OMB Review; Request for Comments on an Extension, Without Change, of a Currently Approved Information Collection

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for comments on an extension, without change, of a currently approved information collection. This information collection, "Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS)" (OMB

Control No. 3206–0190; Form RI 92–19), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Approximately 1,964 forms are completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual estimated burden is 1,964 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

*For information regarding administrative coordination contact:* Cyrus S. Benson, Team Leader, Publications Team, RS/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW.—Room 4332, Washington, DC 20415. (202) 606–4808.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

[FR Doc. 2011–3838 Filed 2–18–11; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

**[OMB Control No. 3206–0032; RI 25–14 and RI 25–14A]**

### Submission for OMB Review; Request for Comments on a Revised Information Collection

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for comments on a revised information collection. "Self-Certification of Full-Time School Attendance for the School Year" (OMB Control No. 3206–0032; RI 25–14), is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. "Information and Instructions for Completing the Self-Certification of Full-Time School Attendance" (OMB Control No. 3206–0032; RI 25–14A), provides instructions for completing the Self-Certification of Full-Time School Attendance for the School Year survey form.

We estimate 14,000 RI 25–14s will be processed annually. We estimate it takes approximately 12 minutes to complete the form. The estimated annual burden is 2,800 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

*For information regarding administrative coordination contact:* Cyrus S. Benson, Team Leader, Publications Team, RS/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415. (202) 606–4808.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

[FR Doc. 2011–3839 Filed 2–18–11; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0201; Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System)

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, "Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System" (OMB Control No. 3206–0201), and the Open Season Web site, Open Season Online, are used by retirees and survivors. They collect information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or for requesting FEHB plan accreditation and Customer Satisfaction Survey information.

We receive approximately 350,100 responses per year to the IVR system and the online web. Each response takes approximately 10 minutes to complete. The annual burden is 58,350 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Linda Bradford (Acting), Deputy Associate Director, Retirement Operations, Retirement Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and

OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget,New Executive Office Building, 725 17th

Street, NW., Room 10235, Washington, DC 20503.

*For information regarding administrative coordination contact:* Cyrus S. Benson, Team Leader, Publications Team, RS/RM/ Administrative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–3840 Filed 2–18–11; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

**FOR FURTHER INFORMATION CONTACT:** Roland Edwards, Senior Executive Resource Services, Employee Services, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under Schedules A, B, and C between December 1, 2010, and December 31, 2010. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/.* A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are not codified in the Code of Federal Regulations. These are agency-specific exceptions.

### Schedule A

Schedule A authorities to report during December 2010:

Section 3105 Department of the Treasury.

(a) Office of the Secretary.

(4) Up to 35 temporary or time-limited positions at the GS–9 through 15 grade levels to support the organization, design and stand-up activities for the Consumer Financial Protection Bureau, as mandated by Public Law 111–203. This authority may be used for the following series: GS–201, GS–501, GS–560, GS–1035, GS–1102, GS–1150, GS–1720, GS–1801, and GS–2210. No new appointments may be made under this authority after July 21, 2011, the designated transfer date of the CFPB.

### Schedule B

No Schedule B authorities to report during December 2010.

### Schedule C

The following Schedule C appointments were approved during December 2010.

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | Office of the Assistant Secretary for Civil Rights. | Special Assistant | DA110011 | 12/01/2010 |
| | Office of Communications | Deputy Director, Operations | DA110016 | 12/01/2010 |
| | Office of the General Counsel | Senior Counselor | DA110009 | 12/10/2010 |
| | Office of the Under Secretary for Rural Development. | Chief of Staff | DA110018 | 12/29/2010 |
| DEPARTMENT OF COMMERCE | Office of the Deputy Secretary | Special Assistant | DC110021 | 12/14/2010 |
| COMMISSION ON CIVIL RIGHTS | Staff Members | Special Assistant | CC110001 | 12/14/2010 |
| COMMODITY FUTURES TRADING COMMISSION. | Office of the Chairperson | Administrative Assistant | CT110001 | 12/29/2010 |
| COUNCIL ON ENVIRONMENTAL QUALITY. | Council on Environmental Quality | Special Assistant | EQ110002 | 12/13/2010 |
| DEPARTMENT OF DEFENSE | Office of the Under Secretary of Defense (Policy). | Senior Communications Advisor for Under Secretary of Defense. | DD110019 | 12/03/2010 |
| | Office of Assistant Secretary of Defense (Public Affairs). | Strategic Planner | DD110026 | 12/13/2010 |
| | Washington Headquarters Services. | Defense Fellow | DD110030 | 12/22/2010 |
| | Washington Headquarters Services. | Defense Fellow | DD110027 | 12/13/2010 |
| DEPARTMENT OF THE NAVY | Office of the Secretary | Special Assistant | DN110007 | 12/21/2010 |
| | Office of the Secretary | Special Assistant | DN110008 | 12/21/2010 |
| DEPARTMENT OF EDUCATION | Office of the Under Secretary | Confidential Assistant | DB110008 | 12/10/2010 |
| | Office of the Secretary | Confidential Assistant | DB110011 | 12/10/2010 |
| | Office of the Under Secretary | Director of the Center for Faith-Based and Neighborhood Partnerships. | DB110012 | 12/10/2010 |
| DEPARTMENT OF ENERGY | Office of Public Affairs | Chief Speechwriter | DE110018 | 12/22/2010 |
| EXPORT–IMPORT BANK | Board of Directors | Executive Secretary | EB110004 | 12/06/2010 |
| | Office of the Executive Vice President. | Senior Vice President of Congressional Affairs. | EB110005 | 12/14/2010 |
| GENERAL SERVICES ADMINISTRATION. | New England Region | Regional Administrator | GS110005 | 12/23/2010 |
| | Office of the Administrator | Senior Advisor of the Chief of Staff. | GS110011 | 12/30/2010 |
| | Office of Communications and Marketing. | Associate Administrator for Communications and Marketing. | GS110010 | 12/29/2010 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES. | Office of the Assistant Secretary for Legislation. | Special Assistant | DH110014 | 12/10/2010 |

| Agency name | Organization name | Position title | Authorization No. | Effective date |
|---|---|---|---|---|
| | Centers for Medicare and Medicaid Services. | Confidential Assistant, Centers for Medicare and Medicaid Services. | DH110013 | 12/10/2010 |
| DEPARTMENT OF HOMELAND SECURITY. | Office of the Executive Secretary for Operations and Administration. | Secretary Briefing Book Coordinator. | DM110023 | 12/13/2010 |
| | Office of the Assistant Secretary for Public Affairs. | Press Assistant | DM110026 | 12/13/2010 |
| | Office of the General Counsel | Special Assistant | DM110028 | 12/13/2010 |
| | Immediate Office of the Deputy Secretary. | Special Assistant | DM110030 | 12/29/2010 |
| | Department of Homeland Security | Deputy Assistant Secretary for Strategic Communications. | DM110031 | 12/22/2010 |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. | Office of the Chief Human Capital Officer. | Staff Assistant | DU110010 | 12/10/2010 |
| | Office of Sustainable Housing and Communities. | Senior Advisor | DU110004 | 12/10/2010 |
| | Office of Policy Development and Research. | Special Assistant | DU110011 | 12/21/2010 |
| DEPARTMENT OF THE INTERIOR | Office of the Deputy Secretary | Special Assistant | DI110013 | 12/22/2010 |
| DEPARTMENT OF JUSTICE | Office of Public Affairs | Press Assistant | DJ110023 | 12/29/2010 |
| | Office of the Deputy Attorney General. | Counsel | DJ110025 | 12/30/2010 |
| | Office of the Deputy Attorney General. | Senior Counsel | DJ100172 | 12/21/2010 |
| | Office of Legal Policy | Counsel | DJ110027 | 12/30/2010 |
| DEPARTMENT OF LABOR | Office of Congressional and Intergovernmental Affairs. | Senior Legislative Officer | DL110008 | 12/17/2010 |
| SMALL BUSINESS ADMINISTRATION. | Office of Communications and Public Liaison. | Senior Communications Assistant. | SB110005 | 12/08/2010 |
| | Office of Field Operations | Regional Administrator, Region III, Philadelphia, PA. | SB110006 | 12/10/2010 |
| DEPARTMENT OF STATE | Foreign Policy Planning Staff | Speechwriter | DS110013 | 12/03/2010 |
| DEPARTMENT OF THE TREASURY. | Secretary of the Treasury | Special Assistant | DY110023 | 12/20/2010 |

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

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–3794 Filed 2–18–11; 8:45 am]

**BILLING CODE 6325–39–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63909; File No. SR–FINRA–2011–005]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Promissory Note Proceedings

February 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 13806 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a chair-qualified public arbitrator also qualified to resolve a statutory discrimination claim.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 2009, FINRA implemented new procedures to expedite the administration of cases that solely involve a broker-dealer's claim that an associated person failed to pay money owed on a promissory note.[3] Under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 60132 (June 17, 2009), 74 FR 30191 (June 24, 2009) (File No. SR–FINRA–2009–015). FINRA announced implementation of New Rule 13806 (Promissory

these procedures, FINRA appoints a single chair-qualified public arbitrator from the roster of arbitrators approved to hear statutory discrimination claims (a statutory discrimination qualified arbitrator)[4] to resolve the dispute.[5] These specially qualified arbitrators are public chair-qualified arbitrators who also are attorneys familiar with employment law and have at least ten years of legal experience. In addition, they may not have represented primarily the views of employers or of employees within the last five years. FINRA proposed using statutory discrimination qualified arbitrators because of the depth of their experience and their familiarity with employment law. At the time that FINRA filed the proposed rule change, these arbitrators were underutilized at the forum.

Since implementing the new procedures, FINRA has found that promissory note cases do not require extensive experience or depth of knowledge (or the limitation on representation of employers or of employees within the last five years). In a majority of completed cases, arbitrators decided the case on the pleadings and the respondent broker did not appear.[6] Experience with the new procedures leads FINRA to propose amending the Industry Code to provide that FINRA will appoint a chair-qualified public arbitrator to a panel resolving a promissory note dispute instead of appointing a statutory discrimination qualified arbitrator. Chair-qualified arbitrators have completed chair training and are attorneys who have served through award on at least two cases, or, if not attorneys, are arbitrators who have served through award on at least three cases.[7]

In addition, the number of promissory note cases has more than doubled in the past two years. As a result of this substantial increase, it is becoming more difficult to appoint panels solely with statutory discrimination qualified arbitrators to these cases. Under the proposed rule change, the number of arbitrators available for appointment in promissory note cases would increase significantly. The proposed rule change would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve these matters.

FINRA proposes to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above because it would ensure that FINRA has a sufficient number of qualified arbitrators readily available to resolve promissory note cases.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–005 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–FINRA–2011–005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–005 and

Note Proceedings) in Regulatory Notice 09–48. The effective date was September 14, 2009.

[4] *See* Rule 13802(c)(3).

[5] Under Rule 13806, if an associated person does not file an answer, or files an answer but does not assert any counterclaims or third party claims, regardless of the amount in dispute, a single statutory discrimination qualified arbitrator decides the case. If an associated person files a counterclaim or third party claim, FINRA bases panel composition on the amount of the counterclaim or third party claim. For counterclaims and third party claims that are not more than $100,000, FINRA appoints a single statutory discrimination qualified arbitrator. For counterclaims and third party claims of more than $100,000, FINRA appoints a three-arbitrator panel comprised of a statutory discrimination qualified arbitrator, a public arbitrator, and a non-public arbitrator.

[6] Of the first 175 promissory note cases completed, arbitrators decided the case on the pleadings 76 percent of the time (unless the case concluded by settlement or some other means).

[7] *See* Rule 12400(c).

[8] 15 U.S.C. 78*o*–3(b)(6).

should be submitted on or before March 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–3799 Filed 2–18–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63910; File No. SR–FINRA–2011–006]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Motions in Arbitration

February 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 12206, 12503, and 12504 of the Code of Arbitration Procedure for Customer Disputes, and Rules 13206, 13503, and 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, "Codes"), to provide moving parties with a five-day period to reply to responses to motions.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Codes specify time periods for a party to respond to a motion,[3] including a motion to dismiss.[4] They do not expressly provide time periods for the party that made the original motion (the "moving party") to reply to a response, which happens on occasion. FINRA's practice has been to forward the reply to the arbitrators, even when staff already have sent the motion and response to the arbitrators. Since the Codes do not prescribe a time period for replying to responses to motions, there have been instances where arbitrators reviewed the motion papers and even ruled on a motion before receiving a reply, causing confusion and wasting time.

FINRA is proposing to amend Rules 12206 and 13206 (Time Limits), Rules 12503 and 13503 (Motions), and Rules 12504 and 13504 (Motions to Dismiss), to provide a moving party with a five-day period to reply to a response to a motion. The proposed amendments would codify FINRA's practice relating to replies to responses to motions and make it transparent. The proposal would provide parties with an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all of the motion papers before issuing a final decision on the motion.

FINRA considered whether codifying a reply period might encourage additional replies to responses to motions, or cause significant delays in the arbitration proceeding. FINRA believes that a five-day period for replies gives moving parties sufficient time to react to responses to motions without causing significant delays to proceedings. Currently, FINRA Rules 12512 and 13512 (Subpoenas) provide moving parties with a 10-day period in which to reply to opposing parties' objections to motions. FINRA has not experienced any increase in replies related to subpoenas because of these rules and the 10-day reply period has not caused significant delays.

Further, on June 21, 2010, FINRA revised its practice relating to responses to motions and published a Notice to Parties on its Web site stating that moving parties have five calendar days from receipt of a response to a motion to submit a reply to the response.[5] After the five-day period, FINRA forwards the motion, any response to the motion, and any reply to the panel at the same time. If FINRA receives a reply after the five-day period expires, staff forwards the reply to the panel upon its receipt. However, FINRA staff does not delay sending the motion, response to the motion, and reply to the panel after the five-day period expires, and the panel may issue a decision upon receipt of those documents.

Based on our experience with the subpoena rules and our revised practice relating to replies to responses, FINRA does not expect the proposal to add a five-day period for replies to responses to motions to result in undue delays.

FINRA proposes to announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will assist parties in arbitrations by codifying FINRA's practice relating to replies to responses to motions. The proposed rule change would ensure that parties have an opportunity to brief fully the issues in dispute, and that arbitrators have all of the motion papers before issuing a final decision on the motion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rules 12503(b) and 13503(b) (Responding to Motions) provide, generally, that parties have 10 days from the receipt of a written motion to respond to the motion.

[4] Rules 12206(b) and 13206(b) (Dismissal under Rule) provide that parties have 30 days to respond to motions. Rules 12504(a) and 13504(a) (Motions to Dismiss Prior to Conclusion of Case in Chief) provide that parties have 45 days to respond to motions.

[5] *See http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P121652.*

[6] 15 U.S.C. 78*o*–3(b)(6).

necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–006 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–FINRA–2011–006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–006 and should be submitted on or before March 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–3800 Filed 2–18–11; 8:45 am]

BILLING CODE 8011–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63916; File No. SR–BATS–2011–005]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.13, Entitled "Order Execution"

February 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2011, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend BATS Rule 11.13, entitled "Order Execution," to modify the description of the SLIM routing strategy offered by the Exchange. The Exchange proposes to implement the proposed rule change on February 25, 2011, or as soon thereafter as practicable.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 11.13, which describes its order routing processes, to modify the description of the SLIM routing strategy offered by the Exchange.

Currently, various routing strategies are available through BATS, including the SLIM routing strategy. As described in Rule 11.13(a)(3)(H), SLIM is a routing option under which an order will check the System for available shares, will be routed to BATS Y–Exchange, Inc. ("BYX"),[4] and then will be sent to destinations on the System routing table. The Exchange currently allows a User[5] to designate whether an order routed through the TRIM routing strategy should check the Exchange's order book before routing away. This optional initial check of the Exchange's order book is not currently available for SLIM, but rather SLIM routed orders always check the Exchange's order book before routing away. The Exchange

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] BYX is a registered national securities exchange and affiliate of the Exchange. *See* Securities Exchange Act Release No. 34–62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (order approving application of BATS Y–Exchange, Inc. for registration as a national securities exchange). BYX commenced operations on October 15, 2010.

[5] As defined in Rule 1.5(cc), the term "User" means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to BATS Rule 11.3.

proposes to modify the description of SLIM to provide Users with two distinct SLIM routing options. The first SLIM routing option will be to check the System for available shares and then route to destinations on the System routing table. The second SLIM routing option will first route to the Exchange's affiliate, BATS Y–Exchange, Inc., return to the Exchange and check the System for available shares, and then route to destinations on the System routing table.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed change to modify the SLIM routing strategy will provide market participants with greater flexibility in routing orders consistent with Regulation NMS without developing complicated order routing strategies on their own.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BATS requests that the Commission waive the 30-day operative delay in order to immediately offer Exchange Users an additional option in use of the SLIM routing strategy, and believes that proposed change to the SLIM routing strategy will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs. The Exchange also believes that a delay to the implementation date would put the Exchange at a competitive disadvantage to other markets that already offer a similar option. The Commission believes that accelerating the 30-day operative delay[12] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–BATS–2011–005 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–BATS–2011–005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BATS–2011–005 and should be submitted on or before March 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–3826 Filed 2–18–11; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. BATS has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63915; File No. SR–NYSEArca–2010–121]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of FactorShares Funds

February 15, 2011.

### I. Introduction

On December 22, 2010, NYSE Arca, Inc. ("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 list and trade shares ("Shares") of FactorShares 2X: S&P500 Bull/TBond Bear, FactorShares 2X: TBond Bull/S&P500 Bear, FactorShares 2X: S&P500 Bull/USD Bear, FactorShares 2X: Oil Bull/S&P500 Bear, and FactorShares 2X: Gold Bull/S&P500 Bear (each a "Fund" and, collectively, "Funds") under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on January 10, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Funds under NYSE Arca Equities Rule 8.200, Commentary .02. Each of the Funds was formed on January 26, 2010 as a separate Delaware statutory trust, and each Fund will issue and offer common units of beneficial interest, which represent units of fractional beneficial undivided interest in and ownership of such Fund.[4]

Factor Capital Management, LLC ("Managing Owner"), a Delaware limited liability company, will serve as the Managing Owner of each Fund. Interactive Brokers LLC, a Connecticut limited liability company, will serve as each Fund's clearing broker ("Commodity Broker"). The Commodity Broker is registered with the Commodity Futures Trading Commission ("CFTC") as a futures commission merchant and is a member of the National Futures Association in such capacity. Each Fund has appointed State Street Bank and Trust Company ("Administrator") as the Administrator, the Transfer Agent, and the Custodian of each Fund. In addition, each Fund has appointed Foreside Fund Services, LLC ("Distributor") as the Distributor to assist the Managing Owner and the Funds with certain functions and duties relating to distribution, compliance of sales and marketing materials, and certain regulatory compliance matters. The Distributor will not open or maintain customer accounts or handle orders for any of the Funds.

*Underlying Indexes and Sub-Indexes*

The Standard & Poor's Factor Index Series ("Indexes") are intended to reflect the daily spreads, or the differences, in the relative return, positive or negative, between the corresponding sub-indexes constructed from futures contracts ("Index Futures Contracts") of each Index. Each Index is comprised of a long sub-index ("Long Sub-Index") and a short sub-index ("Short Sub-Index") (individually, a "Sub-Index" and, collectively, "Sub-Indexes"). The Long Sub-Index is composed of the long front Index Futures Contract ("Long Index Futures Contract").[5] The Short Sub-Index is composed of the short front Index Futures Contract ("Short Index Futures Contract").[6] Each Index is calculated to reflect the corresponding relative return, or spread, which is the difference in the daily changes, positive or negative, between the value of the Long Sub-Index and the value of the Short Sub-Index, plus the return on a risk free component.

The objective of each Index is to track the daily price spreads, or difference between the Sub-Indexes, and in turn, the underlying Index Futures Contracts, to reflect the difference in the daily return between two market segments. Although each Index is calculated to reflect both an excess return and a total return, each Fund tracks an Index that is calculated to reflect a total return. Standard & Poor's Financial Services LLC ("Index Sponsor") is the Index Sponsor for the Indexes and is the calculation agent for the Indexes and Sub-Indexes.[7] The Long Sub-Index tracks the changes in the Long Index Futures Contract, and the Short Sub-Index tracks the changes in the Short Index Futures Contract.

Each Index is rebalanced daily as of the Index Calculation Time (as defined below) in order to continue to reflect the spread, or the difference in the daily return between two specific market segments. By rebalancing each Index on a daily basis as of the Index Calculation Time, each Index will then be comprised of equal notional amounts (*i.e.,* +100% and −100%, respectively) of both of its Long Index Futures Contracts and Short Index Futures Contracts in accordance with its daily objectives. Daily rebalancing of each Index will lead to different results than would otherwise occur if an Index, and in turn, its corresponding Fund, were to be rebalanced less frequently or more frequently than daily.

*Funds*

The objective of each Fund will be to reflect the spread, or the difference, in daily return, on a leveraged basis, between two predetermined market segments. Each Fund will represent a relative value or "spread" strategy seeking to track the differences in daily returns between two futures-based Index components. By simultaneously buying and selling two benchmark Index Futures Contracts (or, as necessary, substantively equivalent combinations of Substitute Futures and Financial Instruments),[8] each Leveraged Fund and Leveraged Inverse Fund will target a daily return equivalent to approximately +200% and −200%, respectively, of the spread, or the difference, in daily return between a long futures contract and a short futures contract (before fees, expenses, and interest income). Thus, each Leveraged Fund will allow investors to potentially profit from the daily return of a Long Index Futures Contract in excess of the daily return of a Short Index Futures Contract. The Leveraged Inverse Fund will allow investors to potentially profit from the daily return of a Short Index Futures Contract in excess of the daily return of a Long Index Futures Contract.

Each Fund will hold a portfolio of Index Futures Contracts, each of which are traded on various futures markets in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63636 (January 3, 2011), 76 FR 1477 ("Notice").

[4] *See* Pre-Effective Amendment No. 3 to Form S–1, dated November 3, 2010, for each Fund (individually, a "Registration Statement," and, collectively, "Registration Statements") (File Nos. 333–164754, 333–164758, 333–164757, 333–164756 and 333–164755, respectively). All Funds, other than the FactorShares 2X: TBond Bull/S&P500 Bear, are also referred to herein as "Leveraged Funds," and FactorShares 2X: TBond Bull/S&P500 Bear is referred to herein as the "Leveraged Inverse Fund."

[5] The term "long front" refers to a long position in the near month contract.

[6] The term "short front" refers to a short position in the near month contract.

[7] The Exchange represents that the Index Sponsor is not affiliated with a broker-dealer.

[8] The term "Substitute Futures" refers to futures contracts other than the specific Index Futures Contracts that underlie the applicable Index that the Managing Owner expects will tend to exhibit trading prices or returns that generally correlate with an Index Futures Contract. The term "Financial Instruments" refers to forward agreements and swaps that the Managing Owner expects will tend to exhibit trading prices or returns that generally correlate with an Index Futures Contract.

the United States. In the event a Fund reaches position limits imposed by the CFTC or a futures exchange with respect to an Index Futures Contract, the Managing Owner may, in its commercially reasonable judgment, cause the Fund to invest in Substitute Futures or Financial Instruments referencing the particular Index Futures Contract, or Financial Instruments not referencing the particular Index Futures Contract if such instruments tend to exhibit trading prices or returns that correlate with the corresponding Index or any Index Futures Contract and will further the investment objective of the Fund.[9] A Fund may also invest in Substitute Futures or Financial Instruments if the market for a specific Index Futures Contract experiences emergencies (such as a natural disaster, terrorist attack, or an act of God) or disruptions (such as a trading halt or flash crash) that would prevent the Fund from obtaining the appropriate amount of investment exposure to the affected Index Futures Contract.[10]

Each Fund also will hold cash and United States Treasury securities and other high credit quality, short-term fixed-income securities ("Fixed Income Instruments") for deposit with its Commodity Broker as margin. No Fund will be "managed" by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial, and market considerations with a view to obtaining positive results under changing market conditions.

A Fund's underlying Index consists of two Sub-Indexes. A Long Sub-Index reflects a passive exposure to a certain near-month long Index Futures Contract. A Short Sub-Index reflects a passive exposure to a certain near-month short Index Futures Contract. Each Index is designed to reflect +100% of the spread, or the difference, in daily return, positive or negative, between the Long Sub-Index and the Short Sub-Index, plus the return on a risk free component.

Because each Fund will seek to achieve its daily investment objective by tracking its corresponding Index on a daily and leveraged basis, each Fund will seek to rebalance daily both its long and short positions around the net asset value ("NAV") calculation time. The purpose of daily rebalancing is to reposition each Fund's investments in accordance with its daily investment objective.

Each Fund will have a leverage ratio of approximately 4:1 upon daily rebalancing, which increases the potential for trading profits and losses. The use of leverage increases the potential for both trading profits and losses, depending on the changes in market value of the Long Index Futures Contracts positions, the Short Index Futures Contracts positions (and/or Substitute Futures and Financial Instruments, as applicable), of each Fund. Holding futures positions with a notional amount in excess of each Fund's NAV constitutes a form of leverage. Because the notional value of each Fund's Index Futures Contracts (and/or Substitute Futures and Financial Instruments, as applicable) will rise or fall throughout each trading day and prior to rebalancing, the leverage ratio could be higher or lower than an approximately 4:1 leverage ratio between the notional value of a Fund's portfolio and a Fund's Equity (estimated NAV) immediately after rebalancing. As the ratio increases, an investor's losses may increase correspondingly.

Each Sub-Index, which is comprised of a certain Index Futures Contract, includes provisions for the replacement (also referred to as "rolling") of its Index Futures Contract as it approaches its expiration date. "Rolling" is a procedure which involves closing out the Index Futures Contract that will soon expire and establishing a position in a new Index Futures Contract with a later expiration date pursuant to the rules of each Sub-Index. In turn, each Fund will seek to roll its Index Futures Contracts in a manner consistent with its Sub-Index's provisions for the replacement of an Index Futures Contract that is approaching maturity.

*Leveraged Funds*

For a Leveraged Fund, a long position is established in the Long Index Futures Contract seeking to provide a leveraged exposure to the Long Sub-Index. A Leveraged Fund will purchase a sufficient number of Long Index Futures Contracts targeting a long notional exposure equivalent to approximately +200% of a Fund's estimated NAV, or Fund Equity. Additionally, a Leveraged Fund will establish a short position in the Short Index Futures Contracts seeking to provide a leveraged exposure to the Short Sub-Index. Accordingly, a Leveraged Fund will sell a sufficient number of Short Index Futures Contracts targeting a short notional exposure equivalent to approximately −200% of Fund Equity. Therefore, immediately after establishing each of these positions, the target gross notional exposure of a Leveraged Fund's aggregate Long Index Futures Contracts and Short Index Futures Contracts will equal approximately +400% (*i.e.,* +200% long and +200% short) of Fund Equity.

*Leveraged Inverse Fund*

For the Leveraged Inverse Fund, a long position is established in the Short Index Futures Contract seeking to provide a leveraged exposure to the Short Sub-Index. The Leveraged Inverse Fund will purchase a sufficient number of Short Index Futures Contracts targeting a long notional exposure equivalent to approximately +200% of Fund Equity. Additionally, the Leveraged Inverse Fund will establish a short position in the Long Index Futures Contracts seeking to provide a leveraged exposure to the Long Sub-Index. Accordingly, the Leveraged Inverse Fund will sell a sufficient number of Long Index Futures Contracts targeting a short notional exposure equivalent to approximately −200% of Fund Equity. Therefore, immediately after establishing each of these positions, the target gross notional exposure of the Leveraged Inverse Fund's aggregate Long Index Futures Contracts and Short Index Futures Contracts will equal approximately +400% (*i.e.,* +200% long and +200% short) of Fund Equity.

*FactorShares 2X: S&P500 Bull/TBond Bear*

The FactorShares 2X: S&P500 Bull/TBond Bear is designed for investors who believe the large-cap U.S. equity market segment will increase in value relative to the long-dated U.S. Treasury market segment. The objective of the FactorShares 2X: S&P500 Bull/TBond Bear will be to seek to track approximately +200% of the daily return of the S&P U.S. Equity Risk Premium Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the U.S. equity and interest rate market segments by primarily establishing a leveraged long position in the E-mini Standard and Poor's 500 Stock Price Index™ Futures ("Equity Index Futures Contract") and a leveraged short position in the 30–Year U.S. Treasury Bond Futures ("Treasury Index Futures Contract").

[9] The Exchange represents that, to the extent practicable, a Fund will invest in swaps cleared through the facilities of a centralized clearing house.

[10] The Managing Owner will attempt to mitigate each Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Managing Owner will take various steps to limit counterparty credit risk, as described in the Registration Statements.

*FactorShares 2X: TBond Bull/S&P500 Bear*

The FactorShares 2X: TBond Bull/S&P500 Bear is designed for investors who believe the long-dated U.S. Treasury market segment will increase in value relative to the large-cap U.S. equity market segment. The objective of the FactorShares 2X: TBond Bull/S&P500 Bear will be to seek to track approximately −200% of the daily return of the S&P U.S. Equity Risk Premium Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the interest rate and U.S. equity market segments by primarily establishing a leveraged long position in the Treasury Index Futures Contract and a leveraged short position in the Equity Index Futures Contract.

*FactorShares 2X: S&P500 Bull/USD Bear*

The FactorShares 2X: S&P500 Bull/USD Bear is designed for investors who believe the large-cap U.S. equity market segment will increase in value relative to the general indication of the international value of the U.S. dollar. The objective of the FactorShares 2X: S&P500 Bull/USD Bear will be to seek to track approximately +200% of the daily return of the S&P 500 Non-U.S. Dollar Index. The Fund will seek to track the spread, or the difference in daily returns, between the U.S. equity and currency market segments by primarily establishing a leveraged long position in the Equity Index Futures Contract and a leveraged short position in the U.S. Dollar Index® Futures.

*FactorShares 2X: Oil Bull/S&P500 Bear*

The FactorShares 2X: Oil Bull/S&P500 Bear is designed for investors who believe that crude oil will increase in value relative to the large-cap U.S. equity market segment. The objective of the FactorShares 2X: Oil Bull/S&P500 Bear will be to seek to track approximately +200% of the daily return of the S&P Crude Oil-Equity Spread Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the oil and U.S. equity market segments by primarily establishing a leveraged long position in the Oil Index Futures Contract[11] and a leveraged short position in the Equity Index Futures Contract.

*FactorShares 2X: Gold Bull/S&P500 Bear*

The FactorShares 2X: Gold Bull/S&P500 Bear is designed for investors who believe that gold will increase in value relative to the large-cap U.S. equity market segment. The objective of the FactorShares 2X: Gold Bull/S&P500 Bear will be to seek to track approximately +200% of the daily return of the S&P Gold-Equity Spread Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the gold and U.S. equity market segments by primarily establishing a leveraged long position in the Gold Index Futures Contract[12] and a leveraged short position in the Equity Index Futures Contract.

Additional information regarding the Funds and the Shares, the Indexes and Sub-Indexes, the Index Futures Contracts, investment strategies, risks, creation and redemption procedures, calculation and dissemination of NAV and NAV calculation times, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statements and in the Notice, as applicable.[13]

## III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[17] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The Index Sponsor will publish the intra-day level of each Index and Sub-Index once every 15 seconds during the NYSE Arca Core Trading Session on the consolidated tape, Reuters, and/or Bloomberg, and the closing level of each Index and Sub-Indexes daily on its Web site. In addition, the Indicative Index Value ("IIV") per Share of each Fund will be calculated by applying the percentage price change of each Fund's holdings in futures contracts (and/or Substitute Futures and Financial Instruments, as applicable) to the last published NAV of each Fund and will be disseminated (in U.S. dollars) by one or more market data vendors every 15 seconds during the NYSE Arca Core Trading Session. Further, the Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of Index Futures Contracts, Substitute Futures and Financial Instruments, characteristics of these Index Futures Contracts, Substitute Futures, and Financial Instruments, as applicable, and Fixed Income Instruments, and the amount of cash held in the portfolio of the Funds. The closing prices and settlement prices of Index Futures Contracts are available from the New York Mercantile Exchange ("NYMEX"), the Chicago Mercantile Exchange, Inc. ("CME"), the COMEX division of NYMEX ("COMEX"), and the Intercontinental Exchange Inc. ("ICE"), automated quotation systems, published or other public sources, and on-line information services such as Bloomberg

[11] The Oil Index Futures Contract provides an exposure to the oil market segment with respect to light sweet crude oil. The Oil Index Futures Contract is a futures contract that provides and permits investors to invest in a substitute instrument in place of the underlying, speculate or hedge, as applicable, in the direction of the value of light sweet crude oil. The Oil Index Futures Contract serves as a proxy for light sweet crude oil because the performance of the Oil Index Futures Contract is dependent upon and reflects the changes in the price of light sweet crude oil.

[12] The Gold Index Futures Contract provides an exposure to the precious metals market segment with respect to gold. The Gold Index Futures Contract is a futures contract that provides and permits investors to invest in a substitute instrument in place of the underlying, speculate or hedge, as applicable, in the direction of the value of gold. The Gold Index Futures Contract serves as a proxy for gold because the performance of the Gold Index Futures Contract is dependent upon and reflects the changes in the price of gold.

[13] *See* Notice and Registration Statements, *supra* notes 3 and 4.

[14] 15 U.S.C. 78f.

[15] 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).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1)(C)(iii).

or Reuters. The specific contract specifications for the Index Futures Contracts are also available on those Web sites, as well as on other financial informational sources. NYMEX, CME, COMEX, and ICE also provide delayed futures information on current and past trading sessions and market news free of charge on their Web sites. The NAV for each Fund will be calculated by the Administrator once a day as of the first to settle of the corresponding Index Futures Contracts, but in no event after 4 p.m. E.T. The Exchange will disseminate on a daily basis via the Consolidated Tape Association information with respect to recent NAV, Shares outstanding, and the daily trading volume of the Shares. The Web site for the Funds and/or the Exchange will contain: (a) The current NAV per Share daily and the prior business day's NAV; (b) the reported closing price; (c) the Prospectus; and (d) other quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination to the IIV, the Indexes, the Sub-Indexes, or the value of the underlying futures contracts occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[18] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that the Index Sponsor has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, with respect to components traded on exchanges, not more than 10% of the weight of a Fund's portfolio in the aggregate will consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.[19]

(5) For the initial and continued listing of the Shares, the Shares must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.[20]

(6) A minimum of 100,000 Shares for each Fund will be outstanding as of the start of trading on the Exchange. This approval order is based on the Exchange's representations.[21]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[22] and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEArca–2010–121), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–3824 Filed 2–18–11; 8:45 am]

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[18] Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying Index Futures Contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[19] The Information Bulletin will further advise ETP Holders that FINRA has implemented increased customer margin requirements applicable to leveraged ETFs (which include the Shares) and options on leveraged ETFs, as described in FINRA Regulatory Notices 09–53 (August 2009) and 09–65 (November 2009).

[20] 17 CFR 240.10A–3.

[21] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63914; File No. SR–Phlx–2011–15]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX LLC to Expand the $2.50 Strike Price Program

February 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on February 2, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Rule 1012, Series of Options Open for Trading, to expand the $2.50 Strike Price Program.[5]

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://*www.sec.gov.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1.Purpose

The purpose of this proposed rule change is to expand the current $2.50 Strike Price Program ("Program") [6] to permit the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $100, provided the $2.50 strike price intervals are no more than $10 from the closing price of the underlying stock in the primary market.[7] Additionally, the Exchange proposes to increase the number of option classes on individual stocks for which the intervals of strike prices will be $2.50 to 60 options classes.

Currently, Exchange Rule 1012 at Commentary .05 permits the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $75.[8] Specifically, the Exchange proposes to amend Commentary .05 to Exchange Rule 1012 to amend the current text.

For example, consider a hypothetical where Caterpillar, Inc. ("CAT") was trading at $81. With approximately one month remaining until expiration, and with a front month at-the-money put option (the 80 strike) trading at approximately $1.30, the investor would be able to purchase a $77.50 strike put at an estimated $.60 per contract. Today, the next available strike of a one month put option is the 75 strike. While the 75 strike put would certainly trade at a lesser price than the 80 strike put,[9] the protection offered would only take effect with a 7.40% decline in the market as opposed to a 4.30% decline in the market. The additional choice would provide the investor an additional to hedge exposure (the opportunity to hedge with a reduced outlay) and thereby minimize risk if there were a decline in the stock price of CAT.

Another example would be if an investor desired to sell call options to hedge the exposure of an underlying stock position and enhance yield. Consider a hypothetical where CAT was trading at $81 and the second month (two months remaining) of a recently out-of-the-money call option (the 85 strike) was trading at approximately $2.35. If the investor where to sell the 85 call against an existing stock position, the investor could yield a return of approximately 2.90% over a two month period or an annualized return of 17.4%. By providing an additional $2.50 strike interval above $75, the investor would have the opportunity to sell the 82.50 strike instead of the 85 strike. If the 85 strike call were trading at $2.35, the 82.50 strike call would trade at approximately 3.30. By selling the 82.50 strike call at 3.30 against an existing stock position, the investor could yield a 4.07% return over a two month period or an annualized 24.40% return. Therefore, an additional choice of a $2.50 strike interval could afford varying yields to the investor.

The Exchange believes that the Program has to date created additional trading opportunities for investors, thereby benefiting the marketplace. The existence of $2.50 strike prices with strike intervals above $75 affords investors the ability to more closely tailor investment strategies to the precise movement of the underlying security and meet their investment, trading and risk management requirements.

The Exchange is also proposing to increase the number of option classes on individual stocks for which the intervals of strike prices will be $2.50 to 60 options classes. Currently, the Exchange may select up to 46 options classes on individual stocks for which the intervals of strike prices will be $2.50. Initially adopted in 1995 as a pilot program, the options exchanges at that time were permitted to list options with $2.50 strike price intervals up to $50 on a total of up to 100 option classes.[10] In 1998, the pilot program was expanded and permanently approved to allow the options exchanges collectively to select up to 200 option classes on which to list options with $2.50 strike price intervals

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release No. 33063 (October 18, 1993), 58 FR 54619 (October 18, 1993) (SR–Phlx–93–18) (a rule change to list strike price intervals of $2.50 or greater for individual stock options). *See also* Securities Exchange Act Release Nos. 52961 (December 15, 2005), 70 FR 76095 (December 15, 2005) (SR–Phlx–2005–77) (a rule change to allow list options with $2.50 strike price intervals for options with strike prices between $50 and $75); and 55338 (February 23, 2007), 72 FR 9371 (March 1, 2007) (SR–Phlx–2007–04) (a rule change to list LEAPS at $2.50 strike price intervals).

[6] Initially adopted in 1995 as a pilot program, the options exchanges at that time were permitted to list options with $2.50 strike price intervals up to $50 on a total of up to 100 option classes. In 1998, the pilot program was expanded and permanently approved to allow the options exchanges collectively to select up to 200 option classes on which to list options with $ 2.50 strike price intervals up to $ 50. Of the current 200 options classes eligible for the Program, 46 have been allocated to the Exchange. In addition, each options exchange is permitted to list options with $2.50 strike price intervals on any option class that another options exchange selects under its Program. *See* Securities Exchange Act Release Nos. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12); and 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[7] The term "primary market" is defined in Exchange Rule 1000 in respect of an underlying stock or exchange-traded fund share as the principal market in which the underlying stock or exchange-traded fund share is traded.

[8] Commentary .05 of Exchange Rule 1012 also permits strike price intervals of $5.00 or greater where the strike price is greater than $25 but less than $200; and $2.50 or greater where the strike price is $25 or less and $10 or greater where the strike price is $200 or more, except as provided otherwise in Rule 1012.

[9] The 75 strike put would trade at $.30 in this example.

[10] *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12).

up to $50.[11] Of the current 200 options classes eligible for the Program, 46 have been allocated to the Exchange.[12] In addition, each options exchange is permitted to list options with $2.50 strike price intervals on any option class that another options exchange selects under its program.

Since 1998, the 200 options classes have not been expanded, although increasingly more companies have completed initial public offerings from 1998 through 2010. Additionally, significantly more options classes are trading in 2010 as compared to 1998. The Exchange proposes to increase its allocation from 46 to 60[13] options classes to accommodate investor requests for $2.50 strikes in certain options classes. The Exchange believes that offering additional options classes would benefit investors.

Furthermore, the Exchange does not believe that this proposal would have a negative impact on the marketplace. The Exchange would compare this proposal with the $1 Strike Price expansion, wherein the Exchange expanded its $1 Strike Price Program from 55 individual stocks to 150 individual stocks on which an option series may be listed at $1 strike price intervals.[14] The Exchange believes that this proposal, wherein the Exchange is proposing to increase its allocation from 46 to 60 options classes is substantially less than the $1 Strike Price Program increase and therefore would have less impact than that program, which has not had any negative impact on the market in terms of proliferation of quote volume or fragmentation.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary system capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks in the $2.50 Strike Price Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the effect of the proposed expansion on the marketplace would not result in a material proliferation of quote volume or concerns with fragmentation. In addition, the Exchange believes that it has the necessary system capacity to handle the potential additional traffic associated with the listing and trading of classes.

Rather, the Exchange believes the $2.50 Strike Price Program proposal would provide the investing public and other market participants increased opportunities to better manage their risk exposure. Accordingly, the Exchange believes that the proposal to expand the Program to allow the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $100 should further benefit investors and the market by providing greater trading opportunities for those underlying stocks that have low volatility and thus trade in a narrow range.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–15 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–15 and should be submitted on or before March 15, 2011.

[11] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[12] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[13] Currently, The Chicago Board Options Exchange, Incorporated ("CBOE") has an allocation of 60 options.

[14] *See* Securities Exchange Act Release No. 62420 (June 30, 2010), 75 FR 39593 (July 9, 2010) (SR–Phlx 2010–72).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–3801 Filed 2–18–11; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 7339]**

### 30–Day Notice of Proposed Information Collection: Refugee Biographic Data, OMB Control Number 1405–0102

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Refugee Biographic Data
- *OMB Control Number:* 1405–0102
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* Bureau of Population, Refugees, and Migration, PRM/A
- *Form Number:* N/A
- *Respondents:* Refugee applicants for the U.S. Refugee Admissions Program
- *Estimated Number of Respondents:* 75,000
- *Estimated Number of Responses:* 75,000
- *Average Hours Per Response:* one-half hour
- *Total Estimated Burden:* 37,500 hours
- *Frequency:* once per respondent
- *Obligation to Respond:* required to obtain a benefit

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 22, 2011.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Delicia Spruell, Department of State, PRM/Admissions, 2025 E Street, NW., Washington, DC 20522–0908, who may be reached on (202) 453–9257 or at *spruellda@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

*Abstract of proposed collection:* The Refugee Biographic Data Sheet describes a refugee applicant's personal characteristics and is needed to match the refugee with a sponsoring voluntary agency to ensure appropriate initial reception and placement in the U.S. under the United States Refugee Admissions Program administered by the Bureau of Population, Refugees, and Migration.

*Methodology:* Biographic information is collected in a face-to-face interview of the applicant overseas. An employee of an Overseas Processing Entity, under contract with PRM, collects the information and enters it into the Worldwide Refugee Admissions Processing System.

Dated: February 14, 2011.

**Lawrence Bartlett,**

*Acting Director, Office of Admissions, Bureau of Population, Refugees, and Migration, Department of State.*

[FR Doc. 2011–3879 Filed 2–18–11; 8:45 am]

**BILLING CODE 4710–33–P**

## DEPARTMENT OF STATE

**[Public Notice 7340]**

### Comprehensive Environmental Evaluations for Antarctic Activities

**SUMMARY:** The Department of State gives notice of the availability of two draft Comprehensive Environmental Evaluations (CEEs) for activities proposed to be undertaken in Antarctica. Interested members of the public are invited to submit comments relative to these CEEs.

**DATES:** Comments must be submitted on or before May 17, 2011.

**ADDRESSES:** Send comments to OES/OPA, Room 2665; Department of State; Washington, DC 20520, or to *FosterHD@state.gov.*

**FOR FURTHER INFORMATION CONTACT:** Harold D. Foster, Office of Ocean and Polar Affairs, (202) 647–0237.

**SUPPLEMENTARY INFORMATION:** Article 3 of Annex I to the Protocol on Environmental Protection to the Antarctic Treaty requires the preparation of a CEE for any proposed Antarctic activity likely to have more than a minor or transitory impact. Draft CEEs are to be made publicly available with a 90-day period for receipt of comments. This notice is published pursuant to 16 U.S.C. 2403a(h).

The Department of State has received two draft CEEs:

1. The United Kingdom has submitted a draft CEE entitled "Proposed Exploration of Subglacial Lake Ellsworth, Antarctica." The document is available on the Internet at the following Web site: *http://www.antarctica.ac.uk//about_antarctica/geography/environment/eia/subglacial_lake_ellsworth_cee.pdf.*

2. The Republic of Korea has submitted a draft CEE entitled "Draft Comprehensive Environmental Evaluation: Construction and Operation of Jang Bogo Antarctic Research Station, Terra Nova Bay, Antarctica." The document is available on the Internet at the following Web site: *http://www.kopri.re.kr/english/eng_news/userBbs/bbsView.do?bbs_cd_n=36&bbs_seq_n=10.*

The Department of State invites interested members of the public to provide written comments on these draft CEEs.

Date: February 16, 2011.

**William R. Meara,**

*Deputy Director, Office of Ocean and Polar Affairs, Department of State.*

[FR Doc. 2011–3876 Filed 2–18–11; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Privacy Act of 1974: System of Records

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

**ACTION:** Notice to establish a new system of records.

**SUMMARY:** FMCSA proposes to establish the system of records called "Medical Exemption Program" in compliance with the terms of the Privacy Act of 1974 (5 U.S.C. 552a). FMCSA has established the Medical Exemption

Program to support the paper-based Federal Vision Exemption Program (FVEP), the paper-based Federal Diabetes Exemption Program (FDEP), and the web-based Med-Ex application managed by the FMCSA Office of Medical Programs. Medical Exemption Program is maintained by MANILA Consulting Group, Inc. (MANILA), an FMCSA contractor. The mission of the FMCSA Office of Medical Programs is to improve the safety of U.S. roadways by disseminating and implementing the medical regulations, guidelines, and policies that ensure commercial motor vehicle (CMV) drivers engaged in interstate commerce are physically qualified to do so. Only authorized DOT personnel with a specific "need to know" can access CMV driver exemption information in Medical Exemption Program. A request from any other individual or entity (*e.g.,* a law firm) for CMV driver exemption information in Medical Exemption Program is treated as a Freedom of Information Act (FOIA) request by FMCSA and processed accordingly. FMCSA performs routine audits of the Medical Exemption Program to ensure that privacy and security objectives are met.

More detailed information concerning the Medical Exemption Program system of records is located within this document. A System of Records Notice (SORN) for the Medical Exemption Program will be published in the **Federal Register** and posted on the DOT Web site. The Privacy Impact Assessment (PIA) for the Medical Exemption Program will be located on the DOT Web site (*http://www.dot.gov/pia.html*).

**DATES:** Effective March 24, 2011. Written comments should be submitted on or before the effective date. If comments are received, the comments will be considered and, where adopted, FMCSA will republish the SORN with the changes or publish an amended SORN.

**FOR SUBMITTING COMMENTS:** Send comments to Pam Gosier-Cox, FMCSA Privacy Officer, FMCSA Office of Information Technology, MC–RI, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or *pam.gosier.cox@dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Habib Azarsina, Departmental Privacy Officer, S–80, United States Department of Transportation, Office of the Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington DC 20590; telephone 202.366.1965, or *habib.azarsina@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 4007 of Public Law 105–178—enacted as the Transportation Equity Act for the 21st Century (TEA–21)—amends Section 31315 and Section 31136(e) of Title 49 of the U.S. Code. TEA–21 allows DOT to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSR) if DOT finds an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption.

## II. Medical Exemption Program

The FVEP and the FDEP provide exemptions for CMV drivers who do not meet the federal vision standard [49 CFR 391.41(b)(10)] or the federal diabetes standard [49 CFR 391.41(b)(3)] in the FMCSR. TEA–21 gives FMCSA broad authority to establish exemption application procedures and the process by which exemption applications are to be managed by FMCSA in order to minimize delays. FMCSA will continue to process diabetes exemption applications using a paper-based system. FMCSA will use the Med-Ex web application to process vision exemption applications. The Medical Exemption Program is designed to perform the following in support of the submission, review, and management of all applicants requesting vision and diabetes exemptions:

1. Provide CMV drivers with the option of applying for a vision exemption electronically in order to expedite the process;
2. Allow FMCSA to process and manage all vision and diabetes exemption applications sent electronically or via mail; and
3. Archive all vision and diabetes exemption program records.

The Medical Exemption Program also allows the FMCSA Office of Medical Programs to monitor CMV drivers for compliance with exemption conditions and determine if CMV drivers remain eligible for an exemption during the exemption renewal process.

The Medical Exemption Program contains Personally Identifiable Information (PII) concerning CMV drivers, such as name; date of birth; Social Security Number (SSN); driver license number and issuing state; medical evaluations from medical examiners, eye care practitioners, and medical specialists; copies of motor vehicle records (MVR); photocopies of driver licenses; and proof of commercial driving experience. This PII is used to positively identify CMV drivers and to determine if CMV drivers qualify for an exemption.

## III. Privacy Act

The Privacy Act of 1974 (5 U.S.C. 552a) governs the means by which the United States Government collects, maintains, and uses PII in a system of records. A "system of records" is a group of records under the control of a federal agency from which information about individuals is retrieved by name or other personal identifier. In accordance with the Privacy Act, each federal agency must publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them).

## IV. Privacy Impact Assessment

FMCSA is publishing a Privacy Impact Assessment (PIA) for Medical Exemption Program to coincide with the publication of the Medical Exemption Program SORN. In accordance with 5 U.S.C. 552a(r), a report on the establishment of this system of records has been sent to the U.S. Congress and the Office of Management and Budget (OMB).

## V. System of Records Notice

**System Number:**

DOT/FMCSA 008

**SYSTEM NAME:**

Medical Exemption Program.

**SECURITY CLASSIFICATION:**

Unclassified, Sensitive.

**SYSTEM LOCATION:**

Medical Exemption Program databases reside at the following locations:

- Volpe National Transportation Systems Center (Volpe Center), U.S. Department of Transportation, Cambridge, MA 02142.
- MANILA Consulting Group, Inc. (MANILA), McLean, VA 22101.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:**

The Medical Exemption Program includes PII from CMV drivers applying for an exemption from the federal vision standard [49 CFR 391.41(b)(10)] or the federal diabetes standard [49 CFR 391.41(b)(3)] in the FMCSR.

**CATEGORIES OF RECORDS IN MEDICAL EXEMPTION PROGRAM:**

FMCSA has established the Medical Exemption Program to support the paper-based Federal Vision Exemption Program (FVEP), the paper-based Federal Diabetes Exemption Program (FDEP), and the web-based Med-Ex application managed by the FMCSA Office of Medical Programs.

*Federal Vision Exemption Database*—A legacy database that contains PII, including sensitive health information received from CMV drivers applying for a vision exemption from the federal vision standard [49 CFR 391.41(b)(10)] via mail, e-mail, and fax prior to the launch of Med-Ex. There are no external users of this database.

*Federal Diabetes Exemption Database*—A database that contains PII, including sensitive health information received from CMV drivers applying for a diabetes exemption from the federal diabetes standard [49 CFR 391.41(b)(3)] via mail, email, and fax. There are no external users of this database.

*Med-Ex Application*—A web-based application that collects and stores PII, including sensitive health information from CMV drivers applying for a vision exemption from the federal vision standard [49 CFR 391.41(b)(10)] via hardcopy applications mailed to FMCSA and electronic applications submitted through the Med-Ex Web site.

The Medical Exemption Program collects the following PII or information containing PII from CMV drivers as part of the vision exemption application process:

A. Applicant Information
- Name
- Home address
- Home/mobile phone number
- Gender
- Date of birth
- SSN

B. CMV Driver Information
- Driver license number and issuing state
- Driver license classification code
- Driver license date of issuance and expiration date
- Restrictions and endorsements
- Copy of valid driver license
- List of all licenses held to operate CMVs in last three years
- Copy of motor vehicle record (MVR) covering last three years.

(Florida drivers must supply official copy of complete driving record from state of Florida due to state citation and accident reporting requirements. Indiana drivers must supply copies of accident reports from state police in addition to MVR due to state accident reporting requirements.)

C. Employment Information
- Current employer name, address, and phone number
- If employed by or leased to companies, driving history and name, address, and phone number for each company for past three years
- If self-employed, all customer names, addresses, and phone numbers for past three years
- Dates of employment

D. Medical Information
- Optometrist/ophthalmologist letter stating the following:
- Date of examination
- Nature, duration, and stability of vision deficiency
- Corrected and uncorrected visual acuity for each eye
- Field of vision test results for each eye
- Color vision information
- Medical opinion regarding ability to operate CMVs with diagnosed visual deficiency

The Medical Exemption Program collects the following PII or information containing PII from CMV drivers as part of the diabetes exemption application process:

A. Applicant Information
- Name
- Home address
- Home/mobile phone number
- Gender
- Date of birth
- SSN

B. CMV Driver Information
- Copy of valid driver license
- Copy of MVR from official state agency
- List of waivers, exemptions, and skill performance evaluation certificates

C. Employment Information
- Current employer name, address, and phone number

D. Medical Information
- Medical Examination Report
- Medical Examiner's Certificate
- Endocrinologist Evaluation Checklist
- Vision Evaluation Checklist

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Motor Carrier Safety Act of 1984 [49 U.S.C. 31136(e)] and the Transportation Equity Act for the 21st Century (TEA–21) (49 U.S.C. 31315)

**PURPOSE(S):**

The purpose for maintaining vision and diabetes exemption records in the Medical Exemption Program is to provide the FMCSA Office of Medical Programs with sufficient information to determine if CMV drivers are eligible for an exemption from the federal vision standard [49 CFR 391.41(b)(10)] or the federal diabetes standard [49 CFR 391.41(b)(3)] in the FMCSR. However, some of the CMV driver information that is collected during the exemption application process is used to ensure that duplicate applications are not submitted. The Medical Exemption Program also collects quarterly and annual medical monitoring information to determine if CMV drivers that have received a diabetes exemption are in compliance with the conditions of the exemption. During the exemption renewal process, updated application information is compared to application information stored in the Medical Exemption Program to determine if CMV drivers remain eligible for a vision or diabetes exemption.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF USE:**

- Information is accessed by FMCSA Office of Medical Programs employees and FMCSA contractors responsible for processing, monitoring, and reviewing exemption applications and by FMCSA employees and contractors responsible for system support and maintenance.

Some applicant information (name, age, basic information related to applicant's medical condition, and current driver license class) is published in the **Federal Register** in a notice requesting public comment upon receipt of an exemption request (49 U.S.C. 31315).

See DOT Prefatory Statement of General Routine Uses published in the **Federal Register** on December 29, 2010 (75 FR 82132).

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:**

**STORAGE:**

Electronic records are stored in the Medical Exemption Program databases at the Volpe Center and MANILA. Vision exemption applications submitted via the web-based Med-Ex application are stored in a database in a secured area within the Volpe Center located in Cambridge, MA. Hardcopy vision exemption applications submitted via mail, email, or fax are entered and scanned into Med-Ex and stored in a secured area at MANILA until a disposition decision is made. MANILA destroys these hardcopy applications after FMCSA completes the disposition of the application. All hardcopy diabetes and vision exemption applications are stored in locked file cabinets.

**RETRIEVABILITY:**

Electronic records are retrieved by using automated searches. Name, tracking number, application status, SSN, and date of birth may be used to retrieve records in the Medical Exemption Program.

**ACCESSIBILITY (INCLUDING SAFEGUARDS):**

All records in the Medical Exemption program at the Volpe Center and MANILA are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Electronic files are stored in separate databases at MANILA and the Volpe Center that are secured by password security, encryption, firewalls, and secured operating systems and to which only authorized personnel with a specific "need to know" have access. Paper files are stored in file cabinets in a locked file room to which only authorized MANILA personnel with a specific "need to know" have access. Physical access to the Volpe Center and MANILA is restricted to authorized personnel. All access to the electronic system and paper files is logged and monitored. Access to electronic records is password protected, and the scope of access for each password is limited to the official need of each individual authorized access.

**RETENTION AND DISPOSAL:**

The proposed Medical Exemption Program records schedule has been submitted to the U.S. National Archives and Records Administration (NARA) and is pending approval. Medical Exemption Program applications with a status of accepted are assigned a disposition date of 10 years. All other applications are assigned a disposition date of 3 years after the application date or 30 days after a status change to deceased, whichever occurs first. Medical Exemption Program applications are destroyed at the end of each calendar year following the disposition date. Hardcopy documents that have been entered and scanned into the Med-Ex application are assigned a 30-day disposition date following the disposition date assigned to the electronic record and destroyed at the end of the calendar year.

**SYSTEM MANAGER CONTACT INFORMATION:**

Office of Medical Programs, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590

**NOTIFICATION PROCEDURE:**

Individuals wishing to know if their records appear in this system may make a request in writing to the System Manager. The request must include the requester's name, mailing address, telephone number and/or e-mail address, a description and the location of the records requested, and verification of identity (such as a statement, under penalty of perjury, that the requester is the individual who he or she claims to be).

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to information about them in this system should apply to the System Manager by following the same procedures as indicated under "Notification Procedure."

**CONTESTING RECORD PROCEDURE:**

Individuals seeking to contest the content of information about them in this system should apply to the System Manager by following the same procedures as indicated under "Notification Procedure."

**RECORD SOURCE CATEGORIES:**

CMV drivers requesting a vision or diabetes exemption are responsible for submitting the following documentation, as appropriate:

- Completed vision or diabetes exemption application.
- Copy of valid driver license.
- Copy of MVR from official state agency.
- Medical Examiner's Certificate.
- Medical Examination Report.
- Endocrinologist Evaluation Checklist.
- Vision Evaluation Checklist or letter from optometrist/ophthalmologist.
- Letters from employers concerning employment history or customer information if self-employed.

For vision exemption applications, authorized MANILA personnel use the Commercial Driver's License Information System (CDLIS) to verify that convictions reported on MVR are accurate and up-to-date. Convictions that are included in CDLIS but missing from MVR are verified by requesting ticket information and police reports from CMV drivers. CDLIS information is reviewed several times during the application process and continues to be monitored after an exemption has been granted.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. 552a), portions of this system are exempt from the requirements of subsections (c)(3), (d), (e)(4)(G)–(I), and (f) of the Privacy Act for the reasons stated in DOT's Privacy Act regulations (49 CFR Part 10, Appendix, Part II, A.8).

Dated: February 15, 2011.

**Habib Azarsina,**

*Departmental Privacy Officer, 202–366–1965*

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[FR Doc. 2011–3825 Filed 2–18–11; 8:45 am]

**BILLING CODE 4910–9X–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2011–07]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before March 14, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2010–1244 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Frances Shaver, ARM–200, (202) 267–4059, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 16, 2011.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2010–1244.

*Petitioner:* Emivest Aerospace Corporation.

*Section of 14 CFR Affected:* § 21.123(g).

*Description of Relief Sought:* Emivest requests relief from the requirement that it must obtain a production certificate for its products within 6 months after the date of issuance of the type certificate. If granted, Emivest would continue to operate as an FAA production approval holder under the terms and conditions of its FAA accepted approved production inspection system.

[FR Doc. 2011–3837 Filed 2–18–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and the U.S. Army Corps of Engineers (USACOE).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and USACOE, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, Interstate 10 (I–10) at Tippecanoe Avenue (post mile [PM] 25.3 to PM 27.3). The project is located between the Cities of San Bernardino and Loma Linda, in San Bernardino County, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 21, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Aaron Burton, Senior Environmental Planner, Environmental Studies "B" Branch Chief, California Department of Transportation, District 8, Division of Environmental Planning, 464 West 4th Street, 6th Floor MS–1162, San Bernardino, California 92401, available 8 a.m.–5 p.m. Monday through Friday, phone number (909) 388–1804 or *e-mail: aaron_burton@dot.ca.gov.* For USACOE: Veronica Chan, Project Manager, Regulatory Division, 915 Wilshire Blvd., Los Angeles, CA 90017, phone number (213) 452–3410.

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans and USACOE, have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Reconstruction of the Interstate 10 (I–10)/Tippecanoe Avenue Interchange (PM 25.3 to 27.3). The general purpose of the project is to improve operational deficiencies, increase capacity at the interchange and to provide adequate access to local businesses, residences, and major facilities served by the interchange. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved via issuance of a Finding of No Significant Impact (FONSI) on January 27, 2011, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act of 1970 [23 U.S.C. 109].
2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].
3. *Wildlife:* Migratory Bird Treaty Act [16 U.S.C. 703–712].
4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Antiquities Act of 1906 [16 U.S.C. 431–433]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].
5. *Wetlands and Water Resources:* Clean Water Act, [33 U.S.C. 1251–1377].
6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(j)].
7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, and 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1).

Issued on: February 15, 2011.

**Shawn E. Oliver,**

*South Team Leader, State Programs, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2011–3922 Filed 2–18–11; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0022]**

### Parts and Accessories Necessary for Safe Operation; Brakes; Application for Exemption From Innovative Electronics; Correction

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

**ACTION:** Notice of application for exemption; request for comments; correction.

**SUMMARY:** This document corrects the docket number for FMCSA's notice of

application for exemption on Parts and Accessories Necessary for Safe Operation; Brakes; Application for Exemption From Innovative Electronics published in the **Federal Register** of February 10, 2011.

**DATES:** Comments must be received on or before March 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

**Correction**

The following correction is made to the Parts and Accessories Necessary for Safe Operation; Brakes; Application for Exemption From Innovative Electronics; Notice of application for exemption; request for comments (76 FR 7623, February 10, 2011), in FR Doc 2011–2985 on page 7623, third column, correct Docket No. FMCSA–2010–0022 to Docket No. FMCSA–2011–0022.

Issued On: February 11, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–3896 Filed 2–18–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0011]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemption from the diabetes mellitus standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 16 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before March 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0011 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*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 Federal Docket Management System (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 acknowledgment 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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**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 from the Federal Motor Carrier Safety Regulations 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 16 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

**Qualifications of Applicants**

*Paul C. Anderson*

Mr. Anderson, age 59, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has he has stable nonproliferative retinopathy in the right eye, and stable proliferative diabetic retinopathy in the left eye. He holds a Class B Commercial Drivers License (CDL) from Washington.

*Brenda A. Barnhill*

Ms. Barnhill, 54, has had ITDM since 1996. Her endocrinologist examined her in 2010 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of her diabetes using insulin; and is able to drive a CMV safely. Ms. Barnhill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2010

and certified that she does not have diabetic retinopathy. She holds a Chauffeur license from Indiana.

*Warren S. Brown*

Mr. Brown, 48, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

*Gregory M. Cox*

Mr. Cox, 47, has had ITDM since 2001. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Cox meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Bruce R. Davis*

Mr. Davis, 50, has had ITDM since 1992. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New Jersey.

*Neal J. Gifford*

Mr. Gifford, 46, has had ITDM since 1997. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Gifford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*William Hepp*

Mr. Hepp, 70, has had ITDM since 1991. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Hepp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

*Ryan B. Holmes*

Mr. Holmes, 25, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Holmes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Oregon.

*Todd A. Kozemchak*

Mr. Kozemchak, 46, has had ITDM since 1975. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Kozemchak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*James L. Mynars*

Mr. Mynars, 55, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Mynars meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Minnesota.

*Dale A. Roberts*

Mr. Roberts, 58, has had ITDM since 1960. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Roberts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

*Clarence C. Schutz*

Mr. Schutz, 73, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Schutz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

*Aaron J. Shown*

Mr. Shown, 32, has had ITDM since 1985. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Shown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

*Daniel H. Starrett*

Mr. Starrett, 51, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Starrett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Bruce K. Thomas*

Mr. Thomas, 60, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Thomas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

*Kory M. Tobias*

Mr. Tobias, 32, has had ITDM since 1988. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Tobias meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Illinois.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: February 15, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–3906 Filed 2–18–11; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0010]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 23 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce

without meeting the Federal vision standard.

**DATES:** Comments must be received on or before March 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0010 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

**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 from the Federal Motor Carrier Safety Regulations 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." FMCSA can renew exemptions at the end of each 2-year period. The 23 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

## Qualifications of Applicants

*Jody L. Baker*

Mr. Baker, age 38, has had a retinal detachment and cystoid macular edema in his right eye since 2000. The visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2010, his ophthalmologist noted, "Mr. Baker, it is my opinion, without reservation, that you have sufficient vision to perform the driving tasks required to operate a commerical vehicle." Mr. Baker reported that he has driven straight trucks for 17 years, accumulating 1.2 million miles. He holds a Class E operator's license from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Gary W. Balcom*

Mr. Balcom, 69, has had age related macular degeneration since 2007. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I certify that, in my medical opinion, Mr. Balcom has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Balcom reported that he has driven buses for 7 years, accumulating 165,438 miles. He holds a Class B Commercial Driver's License (CDL) from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jimmie L. Blue*

Mr. Blue, 71, has had juveline macular degeneration that has been present in both eyes since age 21. The best corrected visual acuity in his right eye is 20/100 and in his left eye, 20/30. Following an examination in 2010, his optometrist noted, "Thus it is my opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Blue reported that he has driven tractor-trailer combinations for 45 years, accumulating 29 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he was driving on the wrong side of the road.

*Ronald Cook*

Mr. Cook, 53, has had optic nerve hypoplasia in his right eye since birth. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Cook is capable of the visual tasks required to operate a commercial vehicle." Mr. Cook reported that he has driven straight trucks for 25 years, accumulating 150,000 miles and tractor-trailer combinations for 25 years, accumulating 187,500 miles. He holds a Class A CDL from Alabama. His driving record for the last 3 years shows one crash in a CMV, for which he was not cited, and no convictions for moving violations in a CMV.

*James H. Corby*

Mr. Corby, 40, has loss of vision in his right eye due to corneal graft surgery in 2000. The best corrected visual acuity in his right eye is hand motion vision and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my medical opinion, Jim can continue to drive a commercial vehicle, as he has done for the last three years." Mr. Corby reported that he has driven straight trucks for 3 years, accumulating 15,600 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Bobby D. Cox*

Mr. Cox, 62, has had central vision loss in his right eye due to macular hemes and scarring since 2002. The visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my professional opinion, Mr.

Cox should have no difficulty performing his duties while driving a commercial vehicle and should continue driving as he has previously." Mr. Cox reported that he has driven straight trucks for 15 years, accumulating 262,500 miles and tractor-trailer combinations for 19½ years accumulating 1.7 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Wesley M. Creamer*

Mr. Creamer, 46, has had a nuclear cataract in his left eye due to an injury sustained at age 9. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "I believe he has sufficient vision to perform the driving tasks required to operate a commerical vehicle." Mr. Creamer reported that he has driven straight trucks for 15½ years, accumulating 77,500 miles and tractor-trailer combinations for 18 years, accumulating 270,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and two convictions for speeding in a CMV. In the first incidence, he exceeded the speed limit by 10 miles per hour (MPH) and in the second incidence, he exceeded the speed limit by 8 MPH.

*Gerald S. Dennis*

Mr. Dennis, 51, has had strabismic amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my medical opinion, Gerald Dennis, has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Dennis reported that he has driven straight trucks for 4 years, accumulating 110,000 miles. He holds a Class D operator's license from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Cleveland E. Edwards*

Mr. Edwards, 39, has had refractive amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/800. Following an examination in 2010, his optometrist noted, "I certify that Cleveland Edwards has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Edwards reported that he has driven straight trucks for 3 years, accumulating 93,504 miles and tractor-trailer combinations for 6 months, accumulating 24,600 miles. He holds a Class D operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Thomas Grandfield*

Mr. Grandfield, 65, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "I certify in my medical opinion, that Thomas Grandfield has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Grandfield reported that he has driven straight trucks for 37 years, accumulating 270,100 miles. He holds a Class D operator's license from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Bruce J. Greil*

Mr. Greil, 55, has had decreased vision in his right eye since 1990 due to coate's disease and a retinal detachment. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Bruce's vision is stable and his vision is adequate to perform all required driving tasks associated with a commercial vehicle." Mr. Greil reported that he has driven straight trucks for 34 years, accumulating 1.6 million miles. He holds a Class B CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Johnnie L. Hall*

Mr. Hall, 51, has myopic degeneration and moderate amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/100. Following an examination in 2010, his opthalmologist noted, "In my medical opinion, he should continue to drive commercial vehicles." Mr. Hall reported that he has driven straight trucks for 25 years, accumulating 650,000 miles and tractor-trailer combinations for 25 years, accumulating 1.4 million miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jerry L. Hofer*

Mr. Hofer, 58, has had a prosthetic left eye due to an eye injury sustained at age 5. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2010, his optometrist noted, "Mr. Hofer's vision has been stable for many years and I believe he has adequate vision to drive and operate a commerical vehicle safely." Mr. Hofer reported that he has driven buses for 4.9 years, accumulating 31,850 miles. He holds a Class B CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Charles R. Hoeppner*

Mr. Hoeppner, 64, has had refractive amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "According to the guidelines set by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." He holds a Class C operator's license from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Lester H. Killingsworth*

Mr. Killingsworth, 57, has had ambloypia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "Therefore, in my medical opinion, I certify that Mr. Killingsworth has sufficient vision to operate a commercial vehicle." Mr. Killingsworth reported that he has driven straight trucks for 4½ years, accumulating 540,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Joseph F. Lopez, III*

Mr. Lopez, 53, has had a prosthetic right eye since childhood. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Joseph Lopez has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Lopez reported that he has driven straight trucks for 3 years, accumulating 24,000 miles. He holds a Class D operator's license from Illinois. His driving record for the last 3 years

shows no crashes and no convictions for moving violations in a CMV.

*Thomas E. Moore*

Mr. Moore, 56, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is light perception and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Thomas has apparently operated a commercial vehicle for many years and is, in my opinion, capable of continuing this type of work." Mr. Moore reported that he has driven straight trucks for 23 years, accumulating 230,000 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*John F. Murphy*

Mr. Murphy, 51, has had strabismic amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is hand motion vision and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I feel that Mr. Murphy has stable strabismic amblyopia OD that he has had since childbirth. I feel that he has vision to operate a commercial vehicle". Mr. Murphy reported that he has driven straight trucks for 12 years, accumulating 624,000 miles and tractor-trailer combinations for 15 years accumulating 1.6 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael O. Regentik*

Mr. Regentik, 56, has had central loss of vision in his right eye due to an eye injury that occurred in 1985. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/25. Following an examination in 2010, his opthamologist noted, "I am currently obtaining a copy of his previous records to compare against my exam; however, it appears that Mr. Regentik has been driving commerical vehicles for many years with this level of vision. I believe that his vision is sufficient to continue to do so." Mr. Regentik reported that he has driven straight trucks for 27 years, accumulating 1.1 million miles and tractor-trailer combinations for 5 years accumulating 50,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Larry D. Robinson*

Mr. Robinson, 40, has had ambloypia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Larry Robinson has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Robinson reported that he has driven straight trucks 12 years, accumulating 240,000 miles. He holds a Class B CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*David Serrano*

Mr. Serrano, 46, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Serrano has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Serrano reported that he has driven straight trucks for 2 years, accumulating 6,000 miles and tractor-trailer combinations for 6 years accumulating 36,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Bill J. Thierolf*

Mr. Thierolf, 55, has had loss of vision in his left eye due to retinal detachment since 1981. The visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2010, his optometrist noted, "Mr. Thierolf has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Thierolf reported that he has driven straight trucks for 26 years, accumulating 520,000 miles and tractor-trailer combinations for 20 years accumulating 600,000 miles. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

*Edward Timpson*

Mr. Timpson, 76, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/25. Following an examination in 2010, his optometrist noted, "I certify in my medical opinion that Mr. Timpson has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Timpson reported that he has driven tractor-trailer combinations for 58 years accumulating 522,000 miles. He holds a Class 10 operator's license from Rhode Island. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business March 24, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: February 15, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–3905 Filed 2–18–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–7363; FMCSA–2002–13411]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 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 exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective March 4, 2011. Comments must be received on or before March 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2000–7363; FMCSA–2002–13411, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*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 Federal Docket Management System (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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 11 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Howard K. Bradley, Kirk G. Braegger, Ambrosio E. Calles, Jose G. Cruz, Harry P. Henning, Christopher L. Humphries, Ralph J. Miles, Thomas C. Rylee, Stanley B. Salkowski, III. Michael G. Thomas, William H. Twardus.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 77066; 67 FR 71610; 67 FR 76439; 68 FR 10298; 70 FR 7545; 72 FR 7812; 74 FR 6689). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 24, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 11 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments

received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 15, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–3904 Filed 2–18–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2006–24015; FMCSA–25246]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 9 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 exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective March 7, 2011. Comments must be received on or before March 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2006–24015; FMCSA–25246, using any of the following methods:

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

*Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*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 Federal Docket Management System (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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

### Exemption Decision

This notice addresses 9 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 9 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

David S. Carman
Thomas G. Danclovic
Glen T. Garrabrant
Alan L. Johnston
James E. Menz
Dennis I. Nelson
Rance A. Powell
Shannon E. Rasmussen
Henry L. Walker

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 9 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 45817; 65 FR 66286; 65 FR 77066; 66 FR 13825; 68 FR 10300; 70 FR 7546; 71 FR 14566; 71 FR 30227; 72 FR 180; 72 FR 7111; 72 FR 9397; 73 FR 27014; 74 FR 6211; 74 FR 6212). Each of these 9 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 24, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 9 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: February 10, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–3899 Filed 2–18–11; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0025]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemption from the diabetes mellitus standard; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 21 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before March 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0025 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please *see* the Privacy Act heading below for further information.

*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 Federal Docket Management System (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 acknowledgment 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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**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 from the Federal Motor Carrier Safety Regulations 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 21 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

**Qualifications of Applicants**

*Kevin J. Agler*

Mr. Agler, age 45, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Agler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A Commerical Drivers License (CDL) from Ohio.

*Roger R. Cabana*

Mr. Cabana, 61, has had ITDM since 2005. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Cabana meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maine.

*Andrew J. Causey*

Mr. Causey, 31, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Causey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Maryland.

*Steven J. Ceckiewicz*

Mr. Ceckiewicz, 43, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Ceckiewicz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Jamie P. Chapman*

Mr. Chapman, 38, has had ITDM since 2000. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Chapman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

*Dennis J. Dallmann*

Mr. Dallmann, 43, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Dallmann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Wade Dawson*

Mr. Dawson, 54, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Dawson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

*Craig A. Fisher*

Mr. Fisher, 36, has had ITDM since 2000. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Fisher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class F operator's license from Missouri.

*Ryan D. Gibson*

Mr. Gibson, 30, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin;

and is able to drive a CMV safely. Mr. Gibson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Omar S. Griffin, Jr.*

Mr. Griffin, 53, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Griffin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

*George W. Heffernan*

Mr. Heffernan, 41, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Heffernan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A operator's license from Utah.

*Dennis Hohnerlein*

Mr. Hohnerlein, 54, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Hohnerlein meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

*Joshua P. Kramer*

Mr. Kramer, 27, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Kramer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Chad M. Kunkel*

Mr. Kunkel, 37, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Kunkel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Donald L. Kurtz*

Mr. Kurtz, 66, has had ITDM since 2002. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Kurtz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Michigan.

*Jeffrey S. Lomber*

Mr. Lomber, 46, has had ITDM since 1992. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Lomber meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Chauffeur license from Michigan.

*Rodney C. McCowan*

Mr. McCowan, 50, has had ITDM since 2005. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. McCowan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Jennifer L. Moran*

Ms. Moran, 39, has had ITDM since 1997. Her endocrinologist examined her in 2010 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of her diabetes using insulin; and is able to drive a CMV safely. Ms. Moran meets the requirements of the vision standard at 49 CFR 391.41(b)(10).

Her optometrist examined her in 2010 and certified that she does not have diabetic retinopathy. She holds a Class C operator's license from Iowa.

*Kevin J. Van Horn*

Mr. Van Horn, 54, has had ITDM since 2003. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Van Horn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Michigan.

*Jimmy M. Welch*

Mr. Welch, 56, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Welch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

*Michael L. Wintrow*

Mr. Wintrow, 53, has had ITDM since 2002. His endocrinologist examined him in 2010 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Wintrow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Ohio.

**Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441) [1]. The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Issued on: February 14, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–3897 Filed 2–18–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–7006; FMCSA–2006–25246; FMCSA–2006–26066]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 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 exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective March 1, 2011. Comments must be received on or before March 24, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–2000–7006; FMCSA–2006–25246; FMCSA–2006–26066, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://*

*www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*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 Federal Docket Management System (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 DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

## Exemption Decision

This notice addresses 13 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

They are:

Kreis C. Baldridge
James L. Baynes
Daniel H. Bungartz
Steven J. Clark
Donald D. Daniels
Michael A. Fouch
Thanh V. Ha
Carl A. Lohrbach
Jeffrey L. Olson
Donnie Riggs
Randall S. Surber
Ernest W. Waff
Joseph W. Wigley

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

## Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 20245; 65 FR 57230; 67 FR 57266; 69 FR 52741; 71 FR 55820; 71 FR 63379; 72 FR 180; 72 FR 9397; 72 FR 1050; 74 FR 6211). Each of these 13 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

## Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by March 24, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 13 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will

take immediate steps to revoke the exemption of a driver.

Issued on: February 11, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–3900 Filed 2–18–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2010–0427]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt fifteen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective February 22, 2011. The exemptions expire on February 22, 2013.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., 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* and/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.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

#### Background

On January 10, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifteen individuals and requested comments from the public (76 FR 1496). The public comment period closed on February 9, 2011 and one comment was received.

FMCSA has evaluated the eligibility of the fifteen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

#### Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifteen applicants have had ITDM over a range of 1 to 33 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the January 10, 2010, **Federal Register** notice and they will not be repeated in this notice.

#### Discussion of Comment

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving records for Vincent J. Laird and are in favor of granting him a Federal diabetes exemption.

#### Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

#### Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or

not it is related to an episode of hypoglycemia; (3) 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 (4) 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.

**Conclusion**

Based upon its evaluation of the fifteen exemption applications, FMCSA exempts, Alvin H. Banghart, Neal S. Faulkner, Stephen D. Ford, Jason J. Hamilton, Robert D. Hamrick, Harlan L. Janssen, Vincent J. Laird, Steven J. Lefebvre, Mitchell J. Moore, James R. Parker, Charles C. Quast, James E. Steele, Kole B. Stevens, Timothy D. Swanson and Raymond E. Williams from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two 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(e) 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: February 14, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–3898 Filed 2–18–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Notice of Application for Special Permits

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

**ACTION:** List of Applications for Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before March 24, 2011.

*Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on February 15, 2011.

**Donald Burger,**

*Chief, Special Permits and Approvals Branch.*

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| | | **NEW SPECIAL PERMITS** | | |
| 15213–N | | Centronic LLC, Houston, TX. | 49 CFR 172.101 Column 9 and 173.310 | To authorize the transportation in commerce of Boron Trifluoride in electron tubes that are part of a radiation detector. (modes 1, 2, 3, 4, 5) |
| 15229–N | | Linde Gas North America LLC, NEW PROVIDENCE, NJ. | 49 CFR 179.300–15 | To authorize the transportation in commerce of certain DOT 106 tank cars containing chlorine that are not fitted with a pressure relief device. (modes 1, 2, 3) |
| 15235–N | | Enco Industries, Inc., Plaistow, NH. | 49 CFR 173,173(b) and 173.242 | To authorize the manufacture, marking, sale and use of UN 11G fiberboard intermediate bulk containers for use as the outer packaging for certain Class waste paints and waste paint related material. (mode 1) |
| 15238–N | | Reeder Flying Service, Inc., Twin Falls, ID. | 49 CFR 49 CFR Table § 172.101, Column (9B), § 172.204(c)(3), § 173.27(b)(2) § 175.30(a)(1) § 172.200, 172.300, and 172.400. | To authorize the transportation in commerce of Acetylene, dissolved exceeding the quantity limitations for transportation by cargo only aircraft. (mode 4) |
| 15240–N | | R&R Hunting & Outdoor Adventures, LLC, Anchorage, AK. | 49 CFR 49 CFR, 172.101 column (8C), 173.241, 173.242, 175.310. | To authorize the transportation in commerce of certain flammable and combustible liquids in alternative packaging having a capacity of 119 gallons or more by air. (mode 4) |

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| 15256–N | | Suretank Group Ltd, Houma, LA. | 49 CFR 173.243(c) | To authorize the manufacture, marking, and sale of non-DOT specification portable tank equipped with an external bottom discharge valve. (modes 1, 3) |
| 15258–N | | Air Products and Chemicals, Inc., Tamaqua, PA. | 49 CFR 180.205 and 173.302a | To authorize the ultrasonic testing of DOT–3A and DOT–3AA specification cylinders for use in transporting Division 2.1, 2.2 or 2.3 material. (modes 1, 2, 3, 4, 5) |
| 15260–N | | Structural Composites Industries, (SCI), Pomona, CA. | 49 CFR 173.302a and 173.304a | To authorize the manufacture, marking, sale and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders. (modes 1, 2, 3, 4, 5) |
| 15263–N | | Alaska Central Express, Anchorage, AK. | 49 CFR 175.501(e)(3)(i) | To authorize the transportation in commerce of cylinders containing oxidizing gases without outerpackaging that conforms to the performance criteria of Air Transport Association Specification 300. (modes 4, 5) |
| 15264–N | | Digital Wave Corporation, Englewood, CO. | 49 CFR 180.209 and 180.205 | To authorize the transportation in commerce of medical compressed oxygen in DOT Specification 3AL cylinders manufactured from aluminum alloy 6061–T6 that are requalified every ten years rather than every five years using 100% ultrasonic examination. (modes 1, 2, 3, 4, 5) |
| 15265–N | | Valjean Corporation, Indian Harbour Beach, FL. | 49 CFR 173.306(a)(3)(v) | To authorize the manufacture, marking, sale and use of a bag-on-valve spray packaging similar to an aerosol container without requiring the hot water bath test. (modes 1, 2, 3, 4, 5) |
| 15266–N | | 3AL Testing Corp., Denver, CO. | 49 CFR 180.205 and 180.209 | To authorize the transportation in commerce of certain DOT 3AL 6061–T6 cylinders used exclusively in medical oxygen service to be requalified every 10 years rather than every 5 years. (modes 1, 2, 3, 4, 5) |
| 15267–N | | SMI Companies, Franklin, LA. | 49 CFR 171.8 | To authorize the manufacture, marking, and sale of non-DOT specification intermodal tanks with a capacity of 150 liters for transportation of liquid bromine. (modes 1, 2, 3, 4, 5) |

[FR Doc. 2011–3795 Filed 2–18–11; 8:45 am]

BILLING CODE 4909–60–M

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

February 15, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

**DATES:** Written comments should be received on or before March 24, 2011 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545–0099.

*Type of Review:* Revision to a currently approved collection.

*Title:* U.S. Return of Partnership Income and related schedules.

*Form:* 1065 and related schedules.

*Abstract:* IRC section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics.

*Respondents:* Private sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 830,348,067 hours.

*Bureau Clearance Officer:* Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

*OMB Reviewer:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

**Dawn D. Wolfgang,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2011–3787 Filed 2–18–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Financial Management Policies—Interest Rate Risk

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

**DATES:** Submit written comments on or before April 25, 2011.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to infocollection.comments@ots.treas.gov. OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information about this proposed information collection from Scott Ciardi on (202) 906–6960, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

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

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

*Title of Proposal:* Financial Management Policies—Interest Rate Risk

*OMB Number:* 1550–0094

*Form Number:* N/A

*Description:* This information collection covers the recordkeeping burden for maintaining data in accordance with OTS's regulation on interest rate risk procedures, 12 CFR 563.176. The purpose of the regulation is to ensure that institutions are appropriately managing their exposure to interest rate risk. To comply with this reporting requirement, institutions need to maintain sufficient records for determining how their interest rate risk exposure is being internally monitored and managed, and how their exposure compares with that of other institutions.

*Type of Review:* Extension of a currently approved collection

*Affected Public:* Businesses or other for-profit

*Estimated Number of Respondents:* 727

*Estimated Frequency of Response:* Quarterly and annually

*Estimated Total Burden:* 29,080 hours

Dated: February 15, 2011.

**Ira L. Mills,**

*Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2011–3804 Filed 2–18–11; 8:45 am]

BILLING CODE 6720–01–P

# FEDERAL REGISTER

Vol. 76 Tuesday,

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Part II

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Nine Bexar County, Texas, Invertebrates; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R2–ES–2010–0091; MO 92210–0–009]**

**RIN 1018–AX11**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Nine Bexar County, Texas, Invertebrates

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat designation for the *Rhadine exilis* (ground beetle, no common name); *Rhadine infernalis* (ground beetle, no common name); Helotes mold beetle (*Batrisodes venyivi*); Cokendolpher Cave harvestman (*Texella cokendolpheri*); Robber Baron Cave meshweaver (*Cicurina baronia*); Madla Cave meshweaver (*Cicurina madla*); and Braken Bat Cave meshweaver (*Cicurina venii*) under the Endangered Species Act of 1973, as amended (Act). We also propose to designate critical habitat for the Government Canyon Bat Cave meshweaver (*Cicurina vespera*) and Government Canyon Bat Cave spider (*Neoleptoneta microps*). These species are collectively known as the nine Bexar County invertebrates. In total, we are proposing approximately 6,906 acres (ac) (2,795 hectares (ha)) as critical habitat for these invertebrates. The proposed critical habitat is located in Bexar County, Texas.

**DATES:** We will consider comments received or postmarked on or before April 25, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by April 8, 2011.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R2–ES–2010–0091.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* Docket No. FWS–R2–ES–2010–0091; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone at 512–490–0057 x248; or by facsimile at 512–490–0974. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Public Comments

This document consists of: (1) A proposed rule to revise designated critical habitat for the *Rhadine exilis* (ground beetle, no common name); *Rhadine infernalis* (ground beetle, no common name); Helotes mold beetle (*Batrisodes venyivi*); Cokendolpher Cave harvestman (*Texella cokendolpheri*); Robber Baron Cave meshweaver (*Cicurina baronia*); Madla Cave meshweaver (*Cicurina madla*); and Braken Bat Cave meshweaver (*Cicurina venii*); and (2) A proposed rule to designate critical habitat for Government Canyon Bat Cave meshweaver (*Cicurina vespera*) and Government Canyon Bat Cave spider (*Neoleptoneta microps*).

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

- The amount and distribution of any of the nine Bexar County invertebrates' habitat;
- What areas occupied at the time of listing and that contain features essential to the conservation of the species should be included in the designation and why;
- Special management considerations or protections that the features essential to the conservation of the nine Bexar County invertebrates identified in this proposal may require, including managing for the potential effects of climate change;
- What areas not occupied at the time of listing are essential for the conservation of the species and why; and
- Site-specific information on subsurface geologic barriers to movement of the species or lack thereof.
- The taxonomy and status of the ground beetle previously identified as *Rhadine exilis* in Black Cat Cave (proposed Unit 13) and the value of the cave and unit for conservation of the species.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(5) Information on whether the benefit of an exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, in particular for those management plans covering specified lands used as mitigation under the La Cantera Habitat Conservation Plan (HCP) and lands on which impacts to the species have been authorized under that HCP. Copies of the La Cantera HCP are available from the Austin Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

(6) Information on the projected and reasonably likely impacts of climate change on any of the nine Bexar County invertebrates and the critical habitat areas we are proposing.

(7) Information related to our 90-day finding on the July 8, 2010, petition to remove critical habitat Unit 13 from designation (*see Previous Federal Actions* below).

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept

comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

## Background

It is our intent to discuss only those topics directly relevant to the designation and revised designation of critical habitat in this proposed rule. For more information on the *Rhadine exilis* (ground beetle, no common name), *Rhadine infernalis* (ground beetle, no common name), Helotes mold beetle, Cokendolpher Cave harvestman, Robber Baron Cave meshweaver, Madla Cave meshweaver, Braken Bat Cave meshweaver, Government Canyon Bat Cave meshweaver, and Government Canyon Bat Cave spider, refer to the final listing rule published in the **Federal Register** on December 26, 2000 (65 FR 81419), the proposed critical habitat designation published August 27, 2002 (67 FR 55063), and the final critical habitat designation published April 8, 2003 (68 FR 17155).

The nine species for which we are proposing to designate critical habitat or to revise critical habitat are collectively known as the nine Bexar County invertebrates, and they inhabit caves or other features known as "karst." The term karst refers to a type of terrain that is formed by the slow dissolution of calcium carbonate from limestone bedrock by mildly acidic groundwater. This process creates numerous cave openings, cracks, fissures, fractures, and sinkholes, and the bedrock resembles Swiss cheese. All of these species are subterranean-dwelling, non-aquatic species of local distribution in north and northwest Bexar County, Texas. They spend their entire lives underground, but surface features are very important as they provide links to drainage into the caves. The following information relates to the designation for all nine species.

Individuals comprising the nine Bexar County invertebrates are small, ranging in length from 0.04 inch (in) (1 millimeter (mm)) to 0.4 in (1 centimeter (cm)). They are eyeless, or essentially eyeless, and most lack pigment or coloration. Adaptations to cave life may include adjustments to the low quantities of food, including low metabolism; long legs for efficient movement; and loss of eyes, possibly as an energy-saving trade-off (Howarth 1983, pp. 374–376). These invertebrates may be able to survive from months to years existing on little or no food (Howarth 1983, p. 375). Average life spans of the listed Bexar County invertebrates in central Texas are unknown, but are likely multiple years for some species (*Cicurina* spp.), based on observations of juveniles kept in captivity (Veni and Associates 1999, p. 165). Reproductive rates of troglobites (small, cave-dwelling animals that have adapted to their dark surroundings), such as these nine invertebrates, are typically very low (Poulson and White 1969, p. 977; Howarth 1983, p. 375).

Based on surveys conducted by Krejca and Weckerly (2007, pp. 286–288), Culver (1986, p. 429), Elliott (1994a, p. 15), and Hopper (2000, p. 459), population sizes of troglobitic invertebrates in humanly-accessible karst features are typically low, with most species known from only a few specimens (Culver *et al.* 2000, p. 2350). While very little is known about the ecology of the nine Bexar County invertebrates, they are known to be top predators in their ecosystem (Service 2008, p. 1.4–5) and are dependent on the stability of their prey base that make up the lower trophic levels of the karst ecosystem (Taylor *et al.* 2004, p. 28).

Because sunlight is absent or only present in extremely low levels in caves, most karst ecosystems depend on nutrients derived from the surface (organic material brought in by animals, washed in, or deposited through root masses), or imported through the feces, eggs, and carcasses of trogloxenes (species that regularly inhabit caves for refuge, but return to the surface to feed) and troglophiles (species that may complete their life cycle in the cave, but may also be found on the surface) (Barr 1968, pp. 47–48; Poulson and White 1969, pp. 971–972; Howarth 1983, pp. 376–377; Culver 1986, p. 429). Primary sources of nutrients include leaf litter, cave crickets (*Ceuthophilus* spp.), small mammals, and other vertebrates that defecate or die in the cave. While the life habits of the nine invertebrates are not well known, the species probably prey on the eggs, larvae, or adults of other cave invertebrates, such as cave crickets (Mitchell 1971b, p. 250).

*Subsurface Environment*

The nine Bexar County invertebrates require stable temperatures and constant, high humidity (Barr 1968, p. 47; Mitchell 1971b, p. 250). They have lost the adaptations needed to prevent desiccation in drier habitats (Howarth 1983, p. 368) and the ability to detect or cope with more extreme temperatures (Mitchell 1971a, pp. 300–301). Temperatures in caves are typically the average annual surface temperature with little variation (Howarth 1983, p. 373; Dunlap 1995, p. 76). Relative humidity is typically near 100 percent in caves that support troglobitic invertebrates (Elliott and Reddell 1989, p. 6; Zara 2010, pp. 9–10).

Microhabitat is an important component of features occupied by the nine Bexar County karst invertebrates and has been quantified for three of the listed species that occur on Camp Bullis, *R. exilis, R. infernalis,* and Madla Cave meshweaver (Zara and Veni 2009, pp. 499–505). In observations made in 13 caves, *R. exilis* was seldom found near an entrance (11 out of 147 instances), occasionally found further from the cave entrance in the twilight zone (typified by very little light and more stable humidity and temperatures than the entrance area) (44 out of 147 instances), and more often found deeper in the caves' dark zones (typified by total darkness, stable humidity and temperature) (91 out of 147 instances). The recorded microhabitats (53 instances) occupied by *R. exilis* were varied, with about 66 percent of them on top of the substrate and 34 percent under rocks or on the undersides of rocks or other materials (Zara and Veni 2009, pp. 497, 503).

From measurements made in three caves, *R. infernalis* was found in the entrance (6 out of 23 instances) and twilight zone (10 out of 23 instances) more often that the dark zone (7 out of 23 instances). The species was found under rocks 85 percent of the time (Zara and Veni 2009, pp. 504–505).

From 75 observations made in 2 caves, Madla Cave meshweavers were found 3 times in the twilight and 72 times in the dark. The species was always found among loose rocks or mud balls. In 117 of the 135 instances where location in respect to substrate was recorded, they were underneath or on the underside of rocks. The other times they were on top of rocks (Zara and Veni 2009, pp. 506–512).

During temperature extremes, the nine Bexar County invertebrates may retreat into small, human-inaccessible,

interstitial spaces (mesocaverns), where the physical environment is more conducive to their humidity and temperature preferences (Howarth 1983, p. 372). These species may spend the majority of their time in interstitial spaces, only leaving them to forage in the larger cave passages (Howarth 1987, p. 377). Krejca and Weckerly (2007, p. 287) recommended 14 surveys to determine the presence of *R. exilis* (one of the nine Bexar County invertebrates) in a cave. Krejca and Weckerly (2007, pp. 287–288) hypothesized that when the species are not detected during surveys the invertebrates are in mesocaverns. Therefore, the mesocaverns should be considered a priority for conservation (Krejca and Weckerly 2007, pp. 287–288).

Connectivity of mesocaverns with larger features is needed to maintain gene flow through karst habitat, serve as a conduit for recolonization of features in the future if current habitat becomes unsuitable, provide refuge during times of extreme temperatures and low humidity, and allow for adaptive management of the species as new information becomes available. The Draft Bexar County Invertebrates Recovery Plan recommended good connectivity with mesocaverns for population dynamics of troglobites as a goal for maintaining a healthy karst ecosystem (Service 2008, p. B–1), but did not specify the area needed, because so little is known about the life-history requirements of these invertebrates.

The extent to which the species use mesocaverns between or around caves is not fully known. White (2006, pp. 76–78) studied the distribution of Bexar County karst invertebrates in detail and found that Hilger Hole, Eagle's Nest, Root Canal, and several other caves within and adjacent to Camp Bullis likely functioned as a single habitat patch, and the species had common genetic signatures between caves. The farthest distance between the entrances of these caves is about 1.5 miles (mi) (2.4 kilometers (km)). However, the area around Camp Bullis is different from many of the other Bexar County caves. All of the Camp Bullis area caves were formed within the damage zone of a fault where interconnected mesocaverns and entrance-less caves occur. Because the area is a faults zone, there are long distances of connectivity between mesocaverns. In another part of Bexar County, two caves (Robber's Cave and Hills and Dales Pit) have entrances about 0.3 mi (0.5 km) apart, have high similarity (although not identical) genetics of Madla Cave meshweavers (White 2006, pp. 97–99), and have mesocaverns that are connected (White, SWCA, pers. comm., 2010). Many of the caves where the nine Bexar County invertebrates occur are interconnected with mesocaverns, and some caves have no entrances.

The northern portion of Bexar County is located on the Edwards Plateau, a broad, flat expanse of Cretaceous carbonate rock that ranges in elevation from 1,100 feet (ft) (335 meters (m)) to 1,900 ft (580 m) (Veni 1988, p. 11; Soil Conservation Service 1966, p. 1). This portion of the Edwards Plateau is dissected by numerous small streams. To the southeast of the Edwards Plateau lies the Balcones Fault Zone, a 16-mi (25-km) wide fault zone that extends from the northeast corner of the County to the western County line. The many streams and karst features of this zone recharge the Edwards Aquifer.

The principal cave-containing rock units of the Edwards Plateau are the upper Glen Rose Formation, Edwards Limestone, Austin Chalk, and Pecan Gap Chalk (Veni 1988, p. 24). The Edwards Limestone accounts for one-third of the cavernous rock in Bexar County, and contains 60 percent of the caves. The Austin Chalk outcrop is second to the Edwards in total number of caves. In Bexar County, the outcrop of the upper member of the Glen Rose Formation accounts for approximately one-third of the cavernous rock, but only 12.5 percent of Bexar County caves (Veni 1988, p. 15). In Bexar County, the Pecan Gap Chalk, while generally not cavernous, has a greater than expected density of caves and passages (Veni 1988, p. 24).

Veni (1994, pp. 68–76) delineated six karst areas (karst fauna regions (KFRs)) within Bexar County: Stone Oak, UTSA (University of Texas at San Antonio), Helotes, Government Canyon, Culebra Anticline, and Alamo Heights (Figure 1). These KFRs are bounded by geological or geographical features that may represent obstructions to the movement (on a geologic time scale) of troglobites, which has resulted in the present-day distribution of endemic (restricted to a given region) karst invertebrates in the Bexar County area. The basis for these divisions is the lack of continuity between caves that may form complete barriers or significant restrictions to migration of troglobites over modern or geologic time scales. These discontinuities are defined based on characteristics that affect cave development combined with the geologic history of the area.

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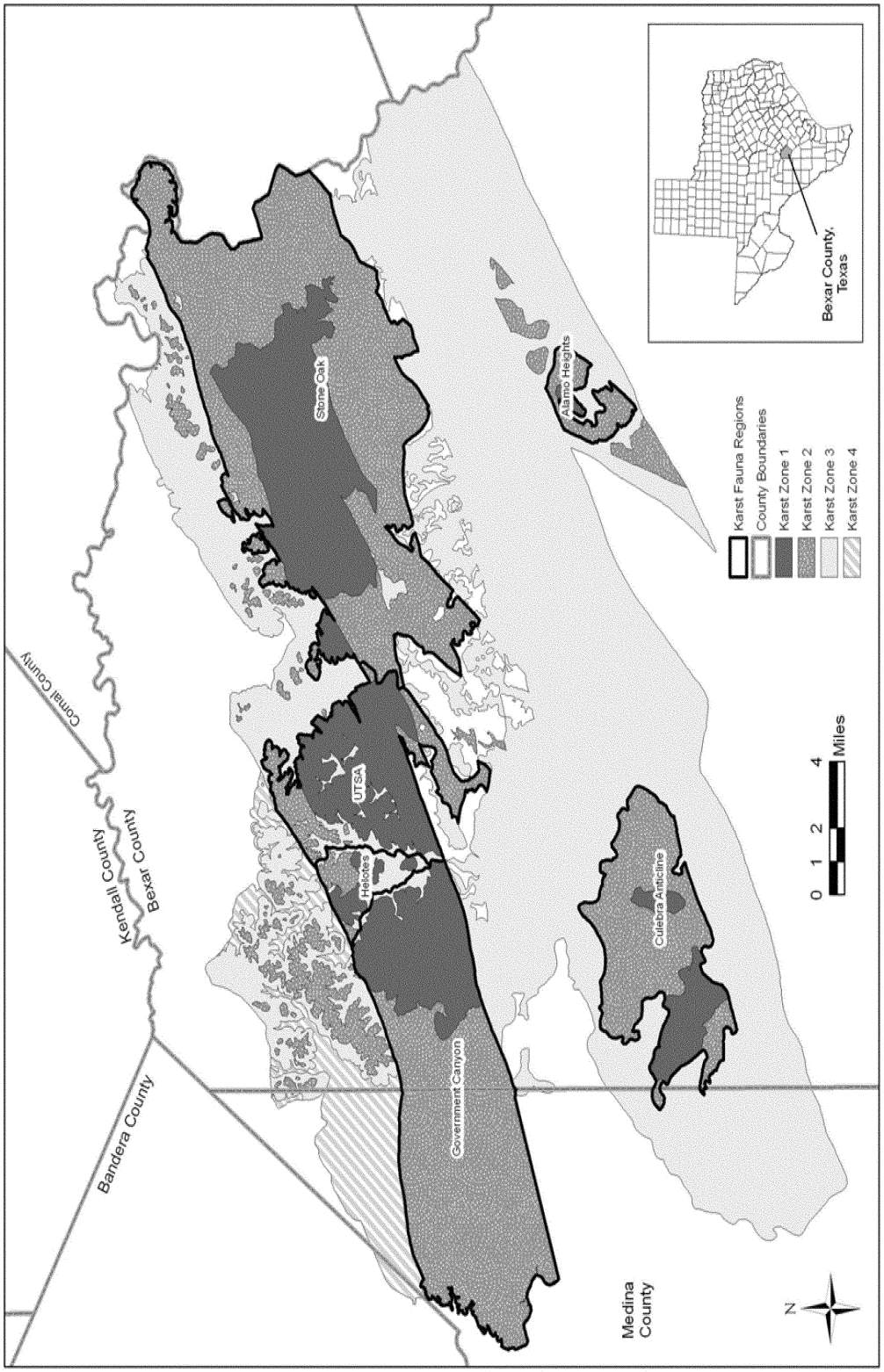
Figure 1. Karst Fauna Regions and Karst Zones in Bexar County, Texas.

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The KFRs were analyzed using the current range of 19 troglobitic species, including the 9 Bexar County invertebrates (Veni 1994, pp. 72–73). The KFRs are important because they are used to establish recovery criteria for individual species in the Draft Bexar County Karst Invertebrate Recovery Plan. To meet those criteria, specified numbers of preserves of a given quality

must be protected within each KFR in which they occur.

Also, the six KFRs were delineated by Veni (2003, pp. 10–18) into five zones that reflect the likelihood of finding a karst feature that will provide habitat for the endangered invertebrates, based on geology, distribution of known caves, distribution of cave fauna, and primary factors that determine the presence, size, shape, and extent of caves with respect to cave development. As described by Veni (2003, pp. 10–18), these five zones are defined as:

*Zone 1:* Areas known to contain one or more of the nine Bexar County invertebrates (areas where species are present).

*Zone 2:* Areas having a high probability of suitable habitat for the invertebrates (areas that may contain one or more invertebrates, but have not been fully surveyed).

*Zone 3:* Areas that probably do not contain the invertebrates (because there is very little suitable karst habitat).

*Zone 4:* Areas that require further research, but are generally equivalent to Zone 3, although they may include sections that could be classified as Zone 2 or 5 (areas where less is known about the karst structure than with Zone 3).

*Zone 5:* Areas that do not contain the Bexar County invertebrates (areas with units of rock that do not contain karst habitat).

*Surface Environment*

Animal Community

*Cave Crickets*

Cave crickets are a critical source of nutrient input for karst ecosystems (Barr 1968, p. 48; Reddell 1993, p. 2). Cave crickets in the genus *Ceuthophilus* occur in most caves in Texas (Reddell 1966, pp. 32–34). Sensitive to temperature extremes and dry environments, cave crickets forage on the surface at night and roost underground during the day. Taylor *et al.* (2005, p. 103) found that cave crickets lay their eggs in the cave, providing food for a variety of karst species (Mitchell 1971b, p. 250). Some karst species also feed on cave cricket feces (Barr 1968, p. 51; Poulson *et al.* 1995, p. 226), and on adults and juveniles directly (Elliott 1994a, p. 16). Cave crickets are scavengers or detritivores (animals that feed on decomposing organic matter), feeding on dead insects, carrion, and some fruits, but not on foliage (Elliott 1994a, p. 16; Taylor *et al.* 2004, p. 29).

Elliott (1994a, p. 8) evaluated cave cricket foraging within 164 ft (50 m) of cave entrances. In a more recent study, Taylor *et al.* (2005, p. 97) found that cave crickets foraged much farther, up to 344 ft (105 m) from a cave entrance.

*Other Surface Animals*

Many central Texas caves with endangered invertebrate species are frequented by mammals, reptiles, and amphibians (Reddell 1967, p. 184). Although there are no studies documenting the role of mammals in central Texas cave ecology, the presence of a large amount of animal materials (such as scat, nesting materials, and dead bodies) indicates they are probably important sources of nutrients. In particular, important sources of nutrients for the cave species may be the fungus, microbes, and other troglophiles and troglobites that grow or feed on animal feces (Elliott 1994b, p. 16; Gounot 1994, p. 204).

For predatory troglobites (such as the nine Bexar County karst invertebrates), invertebrates that accidently occur in the caves may also be an important nutrient source (Hopper 2000, p. 2349). Documented accidental species include snails, earthworms, terrestrial isopods (commonly known as pillbugs or potato bugs), scorpions, spiders, mites, collembola (primitive wingless insects that are commonly known as springtails), thysanura (commonly known as bristletails and silverfish), harvestmen (commonly known as daddy-long-legs), ants, leafhoppers, thrips, beetles, weevils, moths, and flies (Reddell 1965, pp. 146–179; 1966, pp. 27–29; 1999, pp. 40–41).

The imported red fire ant (*Solenopsis invicta*) (fire ant) is an aggressive predator, which has had a devastating and long-lasting impact on native ant populations and other arthropod communities (Vinson and Sorenson 1986, p. 17; Porter and Savignano 1990, p. 2095) and is a threat to the nine Bexar County invertebrates (Elliott 1994b, p. 15; Service 1994, pp. 63–64). Fire ants have been observed building nests both within and near cave entrances as well as foraging in caves, especially during the summer. Shallow caves inhabited by the nine Bexar County invertebrates make them especially vulnerable to invasion by fire ants and other exotic species. Fire ants have been observed preying on several cave species (Elliott 1994b, p. 15). Karst fauna that are most vulnerable to fire ant predation are the eggs, nymphs, and slower-moving adults (James Reddell, Texas Memorial Museum, pers. comm., 2006). The presence of fire ants in and around karst areas could have a drastic detrimental effect on the karst ecosystem through loss of both surface and subsurface species that are critical links in the food chain. Besides direct predation, fire ants threaten listed invertebrates by reducing the nutrient input carried in by cave crickets and other trogloxenes. Because fire ants are voracious, they can out-compete crickets for food resources (Taylor *et al.* 2003, pp. 109–110), leading to a reduction in overall productivity in the caves.

The invasion of fire ants is known to be aided by "any disturbance that clears a site of heavy vegetation and disrupts the native ant community" (Porter *et al.* 1988, p. 916). Porter *et al.* (1991, p. 873) state that control of fire ants in areas greater than 12 ac (5 ha) may be more effective than in smaller areas, because multiple queen fire ant colonies reproduce primarily by "budding," where queens and workers branch off from the main colony and form new sister colonies. Maintaining large, undisturbed areas of native vegetation may also help sustain the native ant communities (Porter *et al.* 1988, p. 916; 1991, p. 869).

Vegetation Community

Surface vegetation is an important element of the karst habitat for several reasons, including its role in providing nutrients from: (1) Direct flow of plant material into the karst with water; (2) habitat and food sources provided for the animal communities that contribute nutrients to the karst ecosystem (such as cave crickets, small mammals, and other vertebrates); and (3) roots that extend into subsurface areas. Surface vegetation also acts as a buffer for the subsurface environment against drastic changes in temperature and moisture, and serves to filter pollutants before they enter the karst system (Biological Advisory Team 1990, p. 38). In some cases, healthy native plant communities also help control certain exotic species (such as fire ants) (Porter *et al.* 1988, p. 916) that may compete with or prey upon the listed species and other species (such as cave crickets) that are important nutrient contributors (Elliott 1994a, pp. 95–96; Lavoie *et al.* 2007, p. 126).

Tree roots may provide a major energy source in shallow caves (Howarth 1983, p. 373). Jackson *et al.* (1999, p. 11387) investigated rooting depth in 21 caves on the Edwards Plateau to assess the below-ground vegetational community structure and the functional importance of roots. They observed roots of plateau live oak (*Quercus fusiformis*) penetrating up to 82 ft (25 m) into the interior of one of the caves. The roots of five other tree species, post oak (*Q. sinuata*), cedar elm (*Ulmus crassifolia*), American elm (*U. americana*), sugar hackberry (*Celtis laevigata*), and Ashe juniper (*Juniperus asheii*), penetrated to

below 16 ft (5 m) into caves. These are all common species in the plateau. Most of the caves in Bexar County are less than 20 ft (6 m) deep, so roots have the potential to penetrate many of them.

Karst ecosystems are heavily reliant on surface plant and animal communities to maintain nutrient flows, reduce sedimentation, and resist exotic and invasive species. As the surface around a cave entrance becomes developed, native plant communities are often replaced with impermeable cover or exotic plants from nurseries. The abundance and diversity of native animals may decline due to decreased food and habitat combined with increased competition and predation from urban, exotic, and pet species. As native surface plant and animal communities are destroyed, food and habitat once available to trogloxenes decreases. It is unknown whether exotic species could contribute the same quantity and quality of nutrients to the karst ecosystem.

*Woodland-Grassland Community*

Because of the various roles played by surface vegetation in maintaining the cave and karst ecosystem, including the nine Bexar County invertebrate species that are part of the ecosystem, we examined the best available scientific information to estimate the surface vegetation needed to support ecosystem processes. The woodland-grassland mosaic community typical of the Edwards Plateau is a patchy environment composed of many different plant species. Van Auken *et al.* (1980, p. 23) studied the woody vegetation of the Edwards and Glen Rose formations in the southern Edwards Plateau in Bexar, Bandera, and Medina Counties. They encountered a total of 24 species of plants on the Edwards or Glen Rose geologic formations, two of the principal, cave-containing rock units of the Edwards Plateau.

To maintain natural vegetation communities over the long term, enough individuals of each plant species must be present for successful reproduction. The number of reproductive individuals necessary to maintain a viable or self-reproducing plant population is influenced by needs for satisfactory germination (Menges 1995, p. 123), genetic variation (Bazzaz 1983, pp. 267–268; Menges 1995, p. 123; Young 1995, pp. 154–155), and pollination (Groom 1998, p. 487; Jennersten 1995, p. 130; Bigger 1999, p. 239). Pavlik (1996, p. 136) stated that long-lived, self-fertilizing, woody plants with high fecundity would be expected to have minimum viable population sizes in the range of 50 to 250 reproductive individuals. Fifty reproductive individuals is a reasonable minimum figure for one of the dominant species of the community, Ashe juniper, based on reproductive profiles (Van Auken *et al.* 1979, p. 170; Van Auken *et al.* 1980, pp. 30–31; Van Auken *et al.* 1981, pp. 1251–1253). This figure would likely be an underestimate for other woody species present in central Texas woodlands, because other woody species are more sensitive to environmental changes and do not meet several of the life-history criteria needed for the lowest minimal viable population size. Although other woody species may require population sizes at the higher end of the range (near 250 individuals) to be viable, as suggested by Pavlik (1996, p. 136), we do not have the data to support that contention. Therefore, on the basis of our review of information available to us, and after soliciting input from a botanist with expertise in the Edwards Plateau (Dr. Kathryn Kennedy, Center for Plant Conservation, pers. comm., 2002), we consider a minimum viable population size for individual plant species composing a typical oak/juniper woodland found in central Texas to be 80 individuals per species. This estimate is based on a habitat type that, as a whole, is fairly mature, and on knowledge that the species are relatively long-lived and reproductively successful.

Based on an analysis of recorded densities, corrected for non-reproductive individuals, we then calculated the area needed to support 80 mature reproductive individuals per species for the 24 species reported by Van Auken *et al.* (1980, p. 23). We determined that the 4 highest area requirements to maintain at least 80 mature individuals were for species that occur at lower densities. These included 198 ac (80 ha) for brasil (*Condalia hookeri*), and approximately 80 ac (32 ha) for each of hoptree (*Ptelea trifoliata*), Mexican buckeye (*Ungnadia speciosa*), and chittamwood (*Bumelia lanuginosa*). Our calculations indicate that the area needed to maintain the seven species with the highest average dominance values, Ashe juniper, Texas live oak, Texas red oak (*Quercus texana*), catclaw acacia (*Acacia greggii*), evergreen sumac (*Rhus virens*), agarita (*Mahonias trifoliata*), and cedar elm (*Ulmus crassifolia*), is approximately 33 ac (13 ha). An area of 33 ac (13 ha) would maintain 80 reproductive individuals for 15 of the 24 species. The area needed to maintain the nine rarest plant species ranges from approximately 49 to 198 ac (20 to 80 ha) with 7 of species in the 65 to 80 ac (26 ha to 32 ha) range.

The Bexar County Invertebrates Draft Recovery Plan used a minimum viable population size of 80 individuals of the top 15 to 20 woodland species and recommended 80 ac (32 ha) of woodland habitat for establishing a high-quality preserve that maintains a diverse community of woody vegetation for at least 100 years (Service 2008, pp. B–9 to B–11).

Most literature found for central Texas native grasslands was descriptive and not quantitative in its treatment of species composition and dispersion. No literature was located that provided grassland species area curves or quantitative species density tables for the central Texas area. Two papers by Lynch (1962, p. 679; 1971, p. 890) examined grassland species on an 8-ac (3.2-ha) tract over time with 123 species and high species turnover. High species turnover can be indicative of a habitat area which is too small; however, pre- and post-drought conditions may also have affected this situation. In a slightly more mesic grassland habitat, Robertson *et al.* (1997, p. 65) found that a 10-ac (4-ha) site captured most of the grassland species diversity (100 species) present, although it does not address population sizes and persistence in isolation, and an increase to a 14-ac (6-ha) tract increased species representation to 140. Another paper on a grassland in a more westerly and drier location in central Texas recorded 157 taxa in a 40-ac (16-ha) enclosure between 1948 and the mid-1970s (Smeins *et al.* 1976, pp. 24–25).

The Draft Bexar County Invertebrates Recovery Plan recommends that 10 ac (4 ha) of total grassland area within a woodland-grassland mosaic is needed in the preserves. This figure was derived by adding a 2 ac (0.8 ha) margin to the 8 ac (3 ha) tract (*see* previous paragraph) with typical species diversity based on Lynch's (1962, p. 679; 1971, p. 890) studies to provide additional area that would aid community stability if the high species turnover there was not due to regional drought influences alone.

Edge Effects

To maintain a viable vegetative community, including woodland and grassland species, an undisturbed area is needed to shield the core habitat from impacts associated with edge effects or disturbance from adjacent urban development (Lovejoy *et al.* 1986, p. 284; Yahner 1988, pp. 333–334). In this context, edge effects refer to the adverse changes to natural communities (primarily from increases in invasive species and pollutants, and changes in

microclimates) from nearby areas that have been modified for human development.

The changes caused by edge effects can occur rapidly. For example, vegetation 6.6 ft (2 m) from a newly created edge can be altered within days (Lovejoy *et al.* 1986, pp. 258–259). Edges may allow invasive plant species to gain a foothold where the native vegetation had previously prevented their spread (Saunders *et al.* 1991, p. 23; Kotanen *et al.* 1998, p. 669; Suarez *et al.* 1998, pp. 2041–2042; Meiners and Steward 1999, p. 261). When plant species composition is altered as a result of an edge effect, changes also occur in the surface animal communities (Lovejoy and Oren 1981, p. 11; Harris 1984, pp. 72, 74; Mader 1984, p. 90; Thompson 1985, pp. 526–527; Lovejoy *et al.* 1986, pp. 283–284; Yahner 1988, p. 335; Fajer *et al.* 1989, p. 1199; Kindvall and Ahlen 1992, pp. 523, 528; Tscharntke 1992, pp. 534–535; Hanski 1995, p. 204; Lindenmayer and Possingham 1995, p. 236; Bowers *et al.* 1996 p. 188; Hill *et al.* 1996, p. 726; Kozlov 1996, pp. 99–100, 102; Kuussaari *et al.* 1996, pp. 791, 798; Turner 1996, p. 204; Mankin and Warner 1997, pp. 140–142; Burke and Nol 1998, p. 96; Didham 1998, p. 404; Suarez *et al.* 1998, p. 2041; Crist and Ahern 1999, p. 687; Kindvall 1999, p. 181). Changes in plant and animal species composition because of edge effects may unnaturally change the nutrient cycling processes required to support cave and karst ecosystem dynamics. To minimize edge effects, the area needed to support a native plant and animal community must have a sufficient perimeter area to protect it.

One recommendation for protecting forested areas from edge effects that are in proximity to clear-cut areas is use of the "three tree height" approach (Harris 1984, p. 110) for estimating the width of the perimeter area needed. We used this general rule to estimate the width of perimeter areas needed to protect the habitat areas. The average height of native mature trees in the Edwards woodland association in Texas ranges from 10 to 30 ft (3 to 9 m) (Van Auken *et al.* 1979, p. 177). Applying the "three tree height" general rule, and using the average value of 21.6 ft (6.6 m) for tree height, we estimated that a perimeter width of at least 66 ft (20 m) is needed around a core habitat area to protect the vegetative community from edge effects. Based on this rule, 10 ac (4 ha) is necessary to protect a 79-ac (32-ha) circular core area. We recognize that the "three tree height" approach described by Harris (1984, pp. 110–111) was based on the distance that effects of storm events ("wind-throw") from a surrounding clear-cut "edge" will penetrate into an old-growth forest stand. Although the effects of edge on woodland/grassland mosaic communities have not been well studied, we believe that the "three trees height" recommendation is the best available peer-reviewed science to protect woodland areas from edge effects (Dr. Kathryn Kennedy, Center for Plant Conservation, pers. comm., 2003).

Animal communities also should be protected from impacts associated with edge effects or disturbance from adjacent urban development. Edges can act as a barrier to dispersal of birds and mammals (Yahner 1988, p. 336; Hansson 1998, p. 55). Invertebrate species are affected by edges. Mader *et al.* (1990, p. 214) found that carabid beetles and lycosid spiders avoided crossing unpaved roads that were even smaller than 9 ft (3 m) wide. Saunders *et al.* (1990, p. 23) suggested that as little as 330 ft (100 m) of agricultural fields may be a complete barrier to dispersal for invertebrates and some species of birds. In general, for animal communities, species need buffers of 164 to 330 ft (50 to 100 m) or greater to ameliorate edge effects (Lovejoy *et al.* 1986, p. 263; Wilcove *et al.* 1986, pp. 249–250; Laurance 1991, p. 206; Laurance and Yensen 1991, pp. 78–79; Kapos *et al.* 1993, p. 425; Andren 1995, p. 237; Reed *et al.* 1996, p. 1102; Burke and Nol 1998, p. 96; Didham 1998, p. 397; Suarez *et al.* 1998, p. 2047).

Nonnative fire ants are known to be harmful to many species of invertebrates and vertebrates. In coastal southern California, Suarez *et al.* (1998, p. 2041) found that densities of the exotic Argentine ant (*Linepithema humile*), which has similar life-history and ecological requirements to the red imported fire ant (Dr. Richard Patrock, University of Texas at Austin, pers. comm., 2003), are greatest near disturbed areas. Native ant communities tended to be more abundant in native vegetation and less abundant in disturbed areas. Based on the association of the Argentine ant and distance to the nearest edge in urban areas, core areas may only be effective at maintaining natural populations of native ants when there is a buffer area of at least 660 ft (200 m) (Suarez *et al.* 1998, pp. 2050, 2052).

We do not have site-specific information on the area needed to maintain populations of animal species, including cave crickets, found in central Texas. Therefore, we are relying on information from other areas. Based on that information, animal communities should be protected by areas of 164 to 330 ft (50 to 100 m) or greater to ameliorate edge effects, and by areas of 660 ft (200 m) to protect against the effects of fire ants. From this data, we determined that a distance of 330 ft (100 m), in addition to the 344-ft (105-m) cave cricket foraging area, would be the minimum needed to protect the cave cricket foraging area from the effects of edge and nonnative species invasions.

Dispersal

The ability of individuals to move between preferred habitat patches is essential for colonization and population viability (Eber and Brandl 1996, p. 621; Fahrig and Merriam 1994, p. 52; Hill *et al.* 1996, pp. 725–726; Kattan *et al.* 1994, pp. 139, 143; Kindvall 1999, p. 172; Kozlov 1996, pp. 95–96; Kuussaari *et al.* 1996, p. 791; Turner 1996, p. 205). Patch shapes allowing connection with the highest number of neighboring patches increase the likelihood that a neighboring patch will be occupied (Fahrig and Merriam 1994, p. 53; Kindvall 1999, p. 172; Kuussaari *et al.* 1996, p. 791; Tiebout and Anderson 1997, p. 620). If movement among populations is restricted and a population is isolated, the habitat patch size must be large enough to ensure that the population can survive (Fahrig and Merriam 1994, p. 54).

Summary

The conservation of the endangered Bexar County karst invertebrates depends on a self-sustaining karst ecosystem, surface and subsurface drainage basins to maintain adequate quantity and quality of moisture, and a viable surface animal and plant community for nutrient input and protection of the subsurface from adverse impacts. The area needed to conserve such an ecosystem includes a minimum core area of 100 ac (40 ha) of healthy, native woodland-grassland mosaic comprised of 80 ac (32 ha) of woodland, 10-ac (4-ha) of grassland, and a 10-ac (4-ha) buffer to protect against edge effects. The 100-ac (40-ha) core area should encompass the surface and subsurface drainage basins of the occupied feature, the 344-ft (105-m) cave cricket foraging distance from the entrance to the cave, and a 330-ft (100-m) distance from the cave cricket area to protect against edge effects.

*Listed Bexar County Invertebrates' Distribution*

By 2000, about 400 caves were known from Bexar County (SWCA 2000). Of the 400 caves, 57 were known to contain 1 or more of the 9 Bexar County invertebrates at the time the species

were listed in 2000 (65 FR 81419; December 26, 2000). Currently, we are aware of 89 caves in Bexar County that contain 1 or more of the 9 Bexar County invertebrates (Table 1).

TABLE 1—CAVES KNOWN TO CONTAIN ONE OR MORE OF THE NINE LISTED BEXAR COUNTY KARST INVERTEBRATES

[We include subspecies in this table in order to show genetic diversity by cave]

| Species (# of caves) | Cave name | Karst fauna |
|---|---|---|
| *Rhadine exilis* (51) | 40 mm Cave * | Stone Oak. |
| | B–52 Cave *. | |
| | Backhole *. | |
| | Banzai Mud Dauber Cave *. | |
| | Black Cat Cave. | |
| | Blanco Cave. | |
| | Boneyard Pit *. | |
| | Bunny Hole *. | |
| | Constant Sorrow Cave *. | |
| | Cross the Creek Cave *. | |
| | Dos Viboras Cave *. | |
| | Eagle's Nest Cave *. | |
| | Hairy Tooth Cave. | |
| | Headquarters Cave *. | |
| | Hilger Hole *. | |
| | Hold-Me-Back Cave *. | |
| | Hornet's Last Laugh Pit. | |
| | Isocow Cave. | |
| | Kick Start Cave. | |
| | MARS Pit *. | |
| | MARS Shaft *. | |
| | Pain in the Glass Cave *. | |
| | Peace Pipe Cave *. | |
| | Platypus Pit *. | |
| | Poor Boy Baculum Cave *. | |
| | Ragin' Cajun Cave. | |
| | Root Canal Cave *. | |
| | Root Toupee Cave *. | |
| | Springtail Crevice. | |
| | Strange Little Cave *. | |
| | Up the Creek Cave *. | |
| | Christmas Cave | Helotes. |
| | Helotes Blowhole. | |
| | Helotes Hilltop Cave. | |
| | Logan's Cave. | |
| | unnamed cave ½ mile N. of Helotes. | |
| | Creek Bank Cave | Government Canyon. |
| | Government Canyon Bat Cave. | |
| | Lithic Ridge Cave. | |
| | Pig Cave. | |
| | San Antonio Ranch Pit. | |
| | Tight Cave. | |
| | Hills and Dales Pit | UTSA. |
| | John Wagner Ranch Cave No. 3. | |
| | Kamikazi Cricket Cave. | |
| | La Cantera Cave No. 1. | |
| | La Cantera Cave No. 2. | |
| | Mastodon Pit. | |
| | Robber's Cave. | |
| | Three Fingers Cave. | |
| | Young Cave No. 1. | |
| *R. infernalis ewersi* (3) | Flying Buzzworm Cave * | Stone Oak. |
| | Headquarters Cave *. | |
| | Low Priority Cave *. | |
| *R. infernalis* new subspecies (9) | Braken Bat Cave | Culebra Anticline. |
| | Caracol Creek Coon Cave | |
| | Game Pasture Cave No. 1. | |
| | Isopit. | |
| | King Toad Cave. | |
| | Max and Roberts Cave. | |
| | Obvious Little Cave. | |
| | Stevens Ranch Trash Hole Cave. | |

TABLE 1—CAVES KNOWN TO CONTAIN ONE OR MORE OF THE NINE LISTED BEXAR COUNTY KARST INVERTEBRATES—Continued

[We include subspecies in this table in order to show genetic diversity by cave]

| Species (# of caves) | Cave name | Karst fauna |
|---|---|---|
| | Wurzbach Bat Cave. | |
| *R. infernalis infernalis* (28) | Bone Pile Cave<br>10 K Cave.<br>Canyon Ranch Pit.<br>Continental Park Cave.<br>Dancing Rattler Cave.<br>Fat Man's Nightmare Cave.<br>Government Canyon Bat Cave.<br>Hackberry Sink.<br>Lithic Ridge Cave.<br>Pig Cave.<br>San Antonio Ranch Pit.<br>Scenic Overlook Cave.<br>Sure Sink.<br>Surprise Sink. | Government Canyon. |
| | Christmas Cave<br>Helotes Blowhole.<br>Logan's Cave.<br>Madla's Cave.<br>Madla's Drop Cave.<br>Sir Doug's Cave. | Helotes. |
| | Genesis Cave | Stone Oak. |
| | John Wagner Ranch Cave No. 3<br>Kamikazi Cricket Cave.<br>Mattke Cave.<br>Robber's Cave.<br>Scorpion Cave.<br>Three Fingers Cave.<br>Crownridge Canyon Cave. | UTSA. |
| Helotes mold beetle (8) | San Antonio Ranch Pit<br>Scenic Overlook Cave.<br>Tight Cave. | Government Canyon. |
| | Christmas Cave<br>Helotes Hilltop Cave.<br>Unnamed Cave ½ mile N of Helotes.<br>Unnamed Cave ½ mile NE of Helotes. | Helotes. |
| | Unnamed Cave 5 miles NE of Helotes | UTSA. |
| Cokendolpher Cave harvestman (1). | Robber Baron Cave | Alamo Heights. |
| Robber Baron Cave meshweaver (2). | Robber Baron Cave meshweaver (2)<br>OB3 | Alamo Heights. |
| Madla Cave meshweaver (20) | Christmas Cave<br>Madla's Cave.<br>Madla's Drop Cave.<br>Helotes Blowhole.<br>Helotes Hilltop Cave. | Helotes. |
| | Headquarters Cave* | Stone Oak. |
| | Breathless Cave<br>Feature No. 50.<br>Hills and Dales Pit.<br>John Wagner Ranch Cave No. 3.<br>La Cantera Cave No. 1.<br>Robber's Cave.<br>Unnamed Cave Helotes Area. | UTSA. |
| | Fat Man's Nightmare Cave<br>Lithic Ridge Cave.<br>Lost Pothole. | Government Canyon. |

TABLE 1—CAVES KNOWN TO CONTAIN ONE OR MORE OF THE NINE LISTED BEXAR COUNTY KARST INVERTEBRATES—Continued

[We include subspecies in this table in order to show genetic diversity by cave]

| Species (# of caves) | Cave name | Karst fauna |
|---|---|---|
| | Pig Cave.<br>San Antonio Ranch Pit.<br>Scenic Overlook Cave.<br>Surprise Sink. | |
| Braken Bat Cave | Braken Bat Cave | Culebra Anticline. |
| Government Canyon | Government Canyon Bat Cave | Government. |
| Government Canyon | Government Canyon Bat Cave<br>Surprise Sink. | Government. |

* Cave located on Camp Bullis.

*Previous Federal Actions*

We published a proposed rule to list the nine Bexar County karst invertebrate species as endangered in the **Federal Register** on December 30, 1998 (63 FR 71855). On November 1, 2000, the Center for Biological Diversity filed a complaint against the Service alleging that we exceeded our 1-year obligation to publish a final listing rule and make a determination whether to designate critical habitat for the nine Bexar County karst invertebrates. We published a final listing rule on December 26, 2000 (65 FR 81419). In the final listing rule, we determined that critical habitat designation was prudent. On August 27, 2002, we proposed that 25 units encompassing approximately 9,516 ac (3,857 ha) in Bexar County, Texas, be designated as critical habitat for the 9 karst invertebrates (67 FR 55063). The final critical habitat rule, designating approximately 1,063 ac (431 ha) in 22 units, was published on April 8, 2003 (68 FR 17155).

On July 17, 2007, the Center for Biological Diversity, Citizens Alliance for Smart Expansion, and Aquifer Guardians in Urban Areas provided us with a 60-day notice of intent to sue on the final critical habitat rule. On January 14, 2009, the plaintiffs (*CBD* v. *FWS,* case number 1:09–cv–00031–LY) filed suit in Federal Court (Western District of Texas) alleging that the Service failed to use the best available science and incorrectly made exclusions according to sections 3(5)(A) and 4(b)(2) of the Act. On December 18, 2009, the parties filed a settlement agreement where we agreed to submit a revised proposed critical habitat determination for publication in the **Federal Register** on or before February 7, 2011, and a final revised determination by February 7, 2012. This proposed rule is published in accordance with that agreement.

On July 8, 2010, we received a petition from Capital Foresight Limited Partnership to revise designated critical habitat for *Rhadine exilis* by removing Unit 13. The petitioner alleges that the original specimens collected from Black Cat Cave were never positively identified as *R. exilis,* another species of *Rhadine* with a slender body form similar to *R. exilis* occurs in a cave a short distance from Black Cat Cave that is likely connected by mesocaverns, and that two species of *Rhadine* with similar body forms have never been documented to occur in the same location. In addition, the petitioner asserts that drinking water is leaking into Black Cat Cave and that the habitat has been highly degraded by the Bulverde Road rending the area no longer suitable for conservation of the species. In reference to the petitioner's claims, more information is needed for us to make a determination. Information in our files indicates that a species expert has identified the original specimen collected from Black Cat Cave as *R. exilis* (T. Barr, pers. comm., 2010). At this time, we find that the petitioner presents substantial scientific or commercial information indicating that revising critical habitat for *R. exilis* may be warranted, but more information is needed. Therefore, with the publication of this rule, we are initiating a review to determine if revising critical habitat for *R. exilis* is warranted. For this proposed critical habitat rule, we believe that Unit 13 continues to meet the definition of critical habitat as discussed in the *Criteria Used to Identify Critical Habitat* section below. Thus, Unit 13 continues to be part of this proposed critical habitat rule, but changes may be made in the final rule based upon new information. This document constitutes our 90-day finding on the petitioned action. We request public comment on this finding. We will issue a 12-month finding on the petition in conjunction with the final critical habitat rule for the nine Bexar County invertebrates, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**Critical Habitat**

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the

prohibition against Federal agencies carrying out, funding, or authorizing actions likely to result in the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

*Physical and Biological Features*

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features essential to the conservation of the species that may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for the nine Bexar County invertebrates from studies of these species' habitat, ecology, and life history as described below.

Space for Individual and Population Growth and for Normal Behavior

The nine Bexar County invertebrates are terrestrial troglobites that require underground passages with stable temperatures (Howarth 1983, p. 373; Dunlap 1995, p. 76) and constant, high humidity (Barr 1968, p. 47; Mitchell 1971a, p. 250). In addition to the larger cave passages that are accessible by humans where the species are collected, the species also need mesocaverns (tiny voids that are connected to larger cave passages) (Howarth 1983, p. 371), which

provide additional habitat to sustain viable populations for the species (White 2006, pp. 100–101). During temperature extremes, small mesocavernous spaces connected to caves may have more favorable humidity and temperature levels than the cave (Howarth 1983, p. 371). However, the abundance of food may be less in mesocaverns than in the larger cave passages. Therefore, the nine Bexar County invertebrates may spend the majority of their time in mesocaverns, only leaving during temporary forays into the larger cave passages to forage (Howarth 1987, p. 377). Based on the information above, we identify karst-forming rock containing subterranean spaces (caves and connected mesocaverns) with stable temperatures, high humidities (near saturation), and suitable substrates (spaces between and underneath rocks for foraging and sheltering) to be a physical and biological feature needed by these species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

*Surface Water*

The nine Bexar County invertebrates need clean water that is free of pollutants to maintain stable humidity and temperatures. In order to maintain stable humidity, the amount of clean water varies depending on the size of the drainage basin, caves, and mesocaverns. Water enters the karst ecosystem through surface and subsurface drainage basins. Well-developed pathways, such as cave openings and fractures, rapidly transport water through the karst with little or no purification. Caves are susceptible to pollution from contaminated water entering the ground because karst has little capacity for self-purification. The route that has the greatest potential to carry water-borne contaminants into the karst ecosystem is through the drainage basins that supply water to the ecosystem. Because cave fauna require material washed in through entrances (including humanly inaccessible cracks), and because they require generally high humidity, it is critical to have drainage basins with unpolluted water. The surface drainage basin consists of the cave entrance and other surface input sources, such as neighboring sinkholes and soil percolation. The subsurface or groundwater drainage basin includes mesocaverns, subterranean streams, and sinkholes that have a connection to the surface, even though the groundwater drainage basin is not always observable from the surface. It is also important to note that the surface and subsurface drainage basins do not necessarily overlap. They may be of different size and direction (Veni 2003, pp. 7–8).

In conclusion, we identify clean surface water that flows into the karst features to be a physical and biological feature needed by these species. Sources may include runoff that flows into the caves' entrances or associated features through sinkholes or fractures, and through-ground flows via fractures, conduits, and passages.

Surface Plant and Animal Community

Areas around and over caves occupied by the nine Bexar County invertebrates need healthy surface plant and animal communities (*see* discussion in Background). Surface vegetation provides nutrients that support trogloxene and accidental species and provides nutrients through leaf litter and root masses that grow directly into caves (Howarth 1983, p. 373; Jackson *et al.* 1999, p. 11387). Because listed troglobites are at the top of their food chain (Service 2008, p. 4.1–5), habitat changes that affect their food sources (including plants and cave crickets) can affect troglobites (Culver *et al.* 2000, p. 395). Surface vegetation also protects the subsurface environment against drastic changes in the temperature and moisture regime. It serves to filter pollutants (to a limited degree) before they enter the karst system and protects against nonnative species invasions (Biological Advisory Team 1990, p. 38). Surface invertebrates provide food for trogloxenes, such as cave crickets, bats, toads, and frogs. Other animals wash or accidentally stumble into caves and are food sources for cave-limited species. A healthy native arthropod community may better stave off fire ants, a threat to the karst ecosystem (Porter *et al.* 1988, p. 914).

As discussed in the background section, cave crickets are an important source of nutrient input for karst ecosystems (Barr 1968, p. 48; Reddell 1993, p. 2). The cave crickets forage on the surface at night and roost in the cave during the day. Cave crickets provide food for karst species, which feed on their eggs, young, and feces (Mitchell 1971b, p. 250; Barr 1968, pp. 51–53; Poulson *et al.* 1995, p. 26).

Many of the vertebrate species that occasionally use caves bring in a significant amount of energy in the form of scat, nesting material, and carcasses. Natural quantities of all of these components are an important part of a functioning ecosystem. Therefore, based on the information above, we identify a healthy surface community of native plants (juniper-oak woodland) and animals (cave crickets) living in and near the karst feature that provides nutrient input and protects the karst ecosystem from adverse effects (nonnative species invasions, contaminants, and fluctuations in temperature and humidity), as being a necessary biological feature.

*Primary Constituent Elements for the Nine Bexar County Invertebrates*

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the nine Bexar County invertebrates in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider primary constituent elements to be the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of these species and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that the nine Bexar County invertebrates' PCEs are:

(1) Karst-forming rock containing subterranean spaces (caves and connected mesocaverns) with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks for foraging and sheltering);

(2) Surface water free of pollutants that flows into the karst features. Sources may include surface runoff that flows directly into the caves' entrances, or water that flows through associated features, such as sinkholes and fractures known to connect to the karst features, or water that flows through the connected subsurface drainage area and subsequently into caves and passages; and

(3) A healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) living near the karst feature that provides nutrient input and protects the karst ecosystem from adverse effects (for example, from nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

*Special Management Considerations or Protection*

When designating critical habitat, we assess whether the specific areas within

the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. The following information provides discussion of the threats to essential features and the special management considerations and protections needed to alleviate those threats.

The Bexar County human population is projected to increase 13.8 percent from 2010 to 2020, and 45.2 percent by 2050 (San Antonio Planning Department 2005, p. 1). Most of the threats to the PCEs are the result of this continued rapid population growth and associated urbanization. Threats include: Filling and collapsing of caves; alteration of drainage patterns, causing decreased water infiltration and karst drying or increased flooding; removal of native vegetation and replacement with impervious cover and nonnative plants; reducing nutrient input; changes in temperature; decreasing humidity; habitat contamination from human activities in the surface and subsurface drainage basins of caves and in adjacent karst areas; increased human visitation resulting in alteration of the cave habitat and direct mortality of listed species; and infestation by fire ants, a predator and competitor that can cause direct predation on and competition with trogloxenes like cave crickets, ultimately reducing nutrient input into the cave.

Veni (1994, p. 23) estimated in 1991 that about 26 percent of known caves in Bexar County had been destroyed through filling, capping, covering with roads and buildings, or blasting by construction and quarrying operations. Further loss undoubtedly has occurred since that report and will likely continue unless appropriate controls are implemented. Construction and development activities that may not destroy an entrance can still result in collapses of the cave ceiling or other adverse effects on the karst environment. On ranch land or in rural areas, it is not uncommon to use caves as trash dumps (Culver 1986, p. 434; Reddell 1993, p. 2) or to cover the entrances to prevent livestock from falling in (Elliott 2000, pp. 374–375). These activities can be detrimental to the karst ecosystem by causing direct destruction of habitat or altering the natural passage of organisms, water, detritus, and other organic matter into a cave. Quarrying of limestone and road base material is a widespread activity that can remove vegetation and destroy karst habitat. A number of occupied caves in Bexar County have been severely impacted in the past, and an examination of recent aerial photography reveals recent impacts to karst habitat in the vicinity of those areas.

Cave organisms are adapted to live in a narrow range of temperature and humidity. To sustain these conditions, both natural surface and subsurface flow of water and nutrients should be maintained. Decreases in water flow or infiltration can result in excessive drying and may slow decomposition, while increases can cause flooding that drowns air-breathing species and carries away available nutrients. Alterations to surface topography, including decreasing or increasing soil depth or adding nonnative fill, can change the nutrient flow into the cave and affect the cave community (Howarth 1983, p. 381). Changes in the amount of impermeable cover, collection of water in devices like storm sewers, increased erosion and sedimentation, and irrigation and sprinkler systems can affect water flow to caves. Altering the quantity of water, its organic content, the timing and extent of flood pulses, or droughts may negatively impact the listed species.

Karst ecosystems are heavily reliant on surface plant and animal communities to maintain nutrient flows, reduce sedimentation, and resist exotic and invasive species. As the surface around a cave entrance or over the associated karst ecosystem is developed, native plant communities are often replaced with impermeable cover or exotic plants from nurseries. The abundance and diversity of native animals may decline due to decreased food and habitat, combined with increased competition and predation from urban, exotic, and pet species. As native surface plant and animal communities are destroyed, food and habitat once available to trogloxenes decreases. Destruction of native plant communities can lead to increased erosion that causes sedimentation within caves. It is necessary to maintain the native woodland and grassland communities; therefore, a perimeter area is needed to shield the core vegetation habitat from impacts associated with edge effects or disturbance from adjacent urban development (Lovejoy *et al.* 1986, p. 284; Yahner 1988, pp. 333–334). Effects from such impacts can include increases in invasive species and pollutants, and changes in microclimates, which can adversely affect the listed species by impacting nutrient cycling processes important in cave/karst dynamics.

Much of the habitat occupied by the Bexar County invertebrates is particularly sensitive to groundwater contamination because little or no filtration occurs, and water penetrates rapidly through bedrock conduits (White 1988, p. 149). The ranges of these species are becoming increasingly urbanized, and, thereby, they are becoming more susceptible to contaminants including sewage, oil, fertilizers, pesticides, herbicides, seepage from landfills, pipeline leaks, or leaks in storage structures and retaining ponds. Activities on the surface, such as disposing of toxic chemicals or motor oil, can contaminate caves (White 1988, p. 388). Materials like cleaning agents, industrial chemicals, and heavy metals can also easily infiltrate subterranean ecosystems. Contamination of karst habitat can also occur from air pollutants and improper disposal of litter, motor oil, batteries, or other household products in or near caves (White 1988, pp. 399–400).

Continued urbanization will increase the likelihood that karst ecosystems are polluted by contamination from leaks and spills, which often have occurred in Bexar County. The Texas Commission on Environmental Quality (TCEQ 2010, pp. TCEQ–5 to TCEQ–8) summarized information on groundwater contamination reported by a number of agencies, and listed 109 groundwater contamination cases that occurred in Bexar County between 1980 and 2000, the majority of them spills or leaks of petroleum products. Groundwater contamination poses a threat to entire karst ecosystems and is particularly difficult to manage because pollutants can originate far from the sensitive karst site and flow rapidly through the subsurface (White 1988, pp. 387–388).

Fire ants are a pervasive, nonnative ant species originally introduced to the United States from South America over 50 years ago, and are an aggressive predator and competitor that has spread across the southern United States. They often replace native species, and evidence shows that overall arthropod diversity, as well as species richness and abundance, decreases in infested areas. Fire ants pose a major threat to the listed invertebrates in Bexar County through direct predation and competition with native species (such as cave crickets) for food resources. This threat is exacerbated by edge effects associated with the soil disturbance and disruption to native communities that accompany urbanization (refer to previous detailed discussion in Background).

Maintaining native vegetation communities greater than 12 ac (5 ha) may help sustain native ant populations and further deter fire ant infestations

(Porter *et al.* 1988, p. 914; 1991, p. 869). On Camp Bullis Military Reservation, in Bexar and Comal Counties, Texas, caves are located in large expanses of undeveloped land. Although there is some ground disturbance in portions of the area, caves on Camp Bullis had less fire ant infestation compared to caves in more urbanized areas even prior to beginning a fire ant treatment regime (Veni and Associates 1999, p. 55). In addition, Suarez *et al.* (1998, p. 2041) found that protection of a core area zone at least 330 ft (100 m) wide helps to reduce the severity of fire ant infestations.

Karst invertebrates in central Texas are especially susceptible to fire ant predation because most caves are relatively short and shallow. The hot dry weather may also encourage fire ants to move into caves during summer months, and cold weather may cause them to seek refuge or prey in the caves during the winter. Fire ants have been found within and near many caves in central Texas and have been observed feeding on dead troglobites, cave crickets, and other species within caves (Elliott 1992, p. 13; 1994, p. 15; 2000, pp. 668, 678; Reddell 1993a, p. 10; Taylor *et al.* 2003, p. 3). Besides direct predation, fire ants threaten listed invertebrates by reducing the nutrient input that fuels the karst ecosystem. Taylor *et al.* (2003, p. 3) found that cave crickets often arrived before fire ants at baits placed above ground at night, but the arrival of fire ants corresponded to the departure of cave crickets, indicating competition for at least some food resources. Of 36 caves visited during status surveys for the 9 Bexar County karst invertebrates, fire ants were found in 26 of them (Reddell 1993a, p. 32).

In summary, threats to the nine Bexar County invertebrates include clearing of vegetation for commercial or residential development, road building, quarrying, or other purposes. Infestation by nonnative vegetation causes adverse changes in the plant and animal community and possibly in the moisture availability. An increase in fire ants can occur with development and cause competition with and predation on other invertebrates in the karst ecosystem. In addition, filling cave features for construction, ranching, or other purposes can adversely affect the listed invertebrate species by reducing nutrient input, reducing small mammal access, and changing moisture regimes. Excavation for construction or operation of quarries can directly destroy karst features occupied by any of the nine Bexar County invertebrates, including the mesocaverns they use. Examples of management that would alleviate these threats include: (1) Protecting native vegetation around occupied karst features and overlying connected mesocaverns, cave cricket foraging areas, surface and subsurface drainage basins, temperature and humidity in karst features and mesocaverns; (2) protecting subsurface karst habitat around the cave footprint to allow movement of karst invertebrates through mesocaverns; (3) controlling fire ants around cave features and within the cave cricket foraging area; (4) preventing unauthorized access to karst features by installing fencing and cave gates; and (5) keeping the immediate areas surrounding cave features free from sources of contamination.

*Criteria Used To Identify Critical Habitat*

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of the nine Bexar County invertebrates, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the nine Bexar County invertebrates. We relied on information in presence/absence survey reports submitted during project consultations with the Service, annual reports on research and recovery activities conducted under a section 10(a)(1)(A) scientific permit, annual 10(a)(1)(B) HCP reports, section 6 species status reports, and literature published in peer-reviewed journals. We also used information from the proposed (67 FR 55063; August 27, 2002) and final (68 FR 17155; April 8, 2003) critical habitat rules, draft recovery plan (Service 2008), and other information in our files. We are not currently proposing any areas outside the geographical area presently occupied by the species because occupied areas are sufficient for the conservation of the species.

Critical habitat units were delineated by creating approximate areas for the units by screen-digitizing polygons (map units) using ArcMap (Environmental Systems Research Institute, Inc.). We defined the boundaries of each unit based on the criteria below:

(1) We identified all areas known to be occupied by the species. We used verified identifications of specimens by recognized species experts. In the case of Madla Cave meshweaver, we also used genetic identification (Paquin and Hedin 2004, p. 3244).

(2) We included the cave footprint with the surface and subsurface drainage areas of the cave, where known.

(3) We included the cave cricket foraging area that is a 344-ft (105-m) circle around the cave entrance (Taylor *et al.* 2005, p. 97), plus an additional 330-ft (100-m) distance to protect against edge effects from invasive species (Lovejoy *et al.* 1986, p. 263; Wilcove *et al.* 1986, pp. 249–250; Laurance 1991, p. 206; Laurance and Yensen 1991, pp. 78–79; Kapos *et al.* 1993, p. 425; Andren 1995, p. 237; Reed *et al.* 1996, p. 1102; Burke and Nol 1998, p. 96; Didham 1998, p. 397; Suarez *et al.* 1998, p. 2047).

(4) We included contiguous geological formations of Karst Zone 1 (areas known to contain one or more of the nine Bexar County invertebrates) to protect mesocaverns likely connected to the caves to a distance of 0.3 mi (0.5 km) from the cave entrance (Kemble White, SWCA, pers. comm., 2010; White 2006, pp. 97–99).

(5) We also included native vegetation of an area of at least 100 ac (40 ha) needed to support the diversity of native plant species normally found in the Edwards Plateau communities and in their normal abundance (Service 2008, pp. B–9 to B–12). This number was derived for woodlands by examining studies of Van Auken *et al.* (1979, p. 170), Van Auken *et al.* (1980, pp. 30–31), Van Auken *et al.* (1981, pp. 1251–1253), and analysis by Dr. Kathryn Kennedy (Center for Plant Conservation, pers. comm. 2002), and Lynch (1962, p. 679; 1971, p. 890). Critical Habitat Units 10a, 10b, 11a through d, and 24 have areas less than 100 ac (40 ha) being proposed for critical habitat, but these units still meet the criterion of having at least 100 ac (40 ha) of native vegetation surrounding the karst ecosystems. We reduced these proposed critical habitat units in size because some of their surface area is being exempted based on the Camp Bullis Military Reservation Integrated Natural Resources Management Plan (*see* Exemptions section below).

Using the distances between caves whose mesocaverns are likely connected as a guide, we analyzed distance from a cave through which karst invertebrates are likely to move through mesocaverns in Bexar County as part of this critical habitat proposed rule. We examined the information on the area around Camp Bullis and found it was not representative of many Bexar County caves, because of the unique geological conditions there. All of the Camp Bullis area caves were formed within the damage zone of a fault where

interconnected mesocaverns and entrance-less caves occur. Because the area is a fault zone, there are long distances of connectivity between mesocaverns. Rather than using the greater distance karst invertebrates are likely to move, we found 0.3 mi (0.5 km) to be a more realistic distance over which karst invertebrates potentially move through mesocaverns in Bexar County. We selected 0.3 mi (0.5 km) because of the connection distance of the mesocaverns of Robbers Cave and Hills and Dales Pit, which are located in another part of Bexar County, similar genetics between meshweavers in the caves, and the lack of faulting or other geological anomalies between them. We believe 0.3 mi (0.5 km) is a reasonable distance limit that karst invertebrates could move through mesocaverns. Although the genetics of the species in the caves are not identical, this represents the best available information we have. The 0.3-mi (0.5-km) distance was in Karst Zone 1, and the caves do not have geologic barriers to movement between them. Based on the best available information, we believe it is an appropriate distance to represent potential use of mesocaverns by the nine Bexar County invertebrates.

An area with a 0.3-mi (0.5-km) radius is equal to 179 ac (72 ha). We used this 179-ac (72-ha) area around cave locations with known occurrences as a guide for mapping the physical and biological features essential to the conservation of the nine Bexar County invertebrates. We designated all of Karst Zone 1 within the 0.3-mi (0.5-km) radius of the cave. In units where we needed additional surface habitat to reach the 100-ac (40-ha) target for native vegetation, we included adjacent surface habitat over Karst Zone 1 surface habitat. If native vegetation was not available in a Karst Zone 1 area, we used other Karst Zones to reach the target surface acreage. In units that are all Karst Zone 1 and are fully vegetated, the 179-ac (73-ha) area of native vegetation derived using the 0.3-mi (0.5-km) radius circle around cave entrances is included. In units with high levels of surface impact or with only a small amount of Karst Zone 1, we went outside the 0.3-mi (0.5-km) radius around cave locations to include at least 100 ac (40 ha) of vegetation.

When the 0.3-mi (0.5-km) distance around individual cave entrances in Karst Zone 1 (areas known to contain one or more of the nine Bexar County invertebrates) or the expanded vegetation community overlapped, we included caves in the same unit. We did not include area for cave cricket foraging if it was on the other side of an urban edge like a major roadway because such edges act as barriers to cricket movement.

In this proposed critical habitat for the nine Bexar County invertebrates, we selected areas based on the best scientific data available that possess those physical and biological features essential to the conservation of the species and that may require special management considerations or protection. We identified critical habitat units that are known to be occupied based on one or more surveys that resulted in the collection of a specimen from the karst feature and verification of species by a taxonomic expert. Even though the nine Bexar County invertebrates spend their entire lives underground, we included specific surface features when identifying critical habitat units because they are important drainage links into the caves and because surface habitat is needed to support the plant and animal communities upon which the invertebrates depend. Because some of the rarer species are difficult to collect, and it may take many attempts to collect even more common species, we included all locations with historic records of species occupancy, regardless of date. In the case of the Madla Cave meshweaver, in addition to morphological identifications, we used genetic identification of specimens to verify known locations (Paquin and Hedin 2004, p. 3244). We determined the units based on the presence of one or more of the defined PCEs and the kind, amount, and quality of habitat associated with those occurrences. Some of the units contain the appropriate quantity and distribution of PCEs to support the life cycle stages we have determined as essential to the conservation of the species. Other units or portions of units contain only a portion of the PCEs. We did this because the PCEs that are present can support the listed species, even though not all PCEs are present. For example, surface habitat without a healthy plant and animal community can continue to support listed invertebrates below the surface, and clean water from modified surface areas can provide the humidity needed by the listed invertebrates.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures which lack the surface PCEs for the nine Bexar County invertebrates. However, we included some developed areas even though such lands lack the surface PCEs for the nine Bexar County invertebrates. We included these developed lands because they contain the subsurface PCEs needed by the invertebrates, such as karst-forming rock containing subterranean spaces. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of developed lands that did not contain subsurface PCEs. Any such lands that do not contain subsurface PCEs inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands that do not contain subsurface PCEs would not trigger section 7 consultations with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PCEs in the adjacent critical habitat.

We are proposing for designation as critical habitat units that we believe were occupied at the time of listing and which contain one or more PCEs to support life-history functions essential for the conservation of the species. For some units, we did not know at the time of listing that these areas were occupied because surveys had not yet been conducted or the species had not yet been found in previous surveys. These sites not known to be occupied at the time of listing are being proposed for critical habitat because they are essential for the conservation of the species. We are not including any unoccupied areas in this rule. In addition, units are proposed for designation based on sufficient PCEs being present to support any of the nine Bexar County invertebrates' life processes. Some units contain all PCEs and support multiple life processes. Some units contain only a portion of the PCEs necessary to support one or more of the nine Bexar County invertebrates' particular use of that habitat.

**Summary of Changes From Previously Designated Critical Habitat**

The areas identified in this proposed rule constitute a proposed revision of the areas we designated as critical habitat for the seven Bexar County invertebrates on April 8, 2003 (68 FR 17155). The significant differences between the 2003 rule and this proposal are:

(1) This proposed rule, which is based partly on new occupancy information since we originally proposed critical habitat (Service 2008, pp. D–4–D–12; J. Krejca, Zara Environmental Consultants,

pers. comm., 2010; K. White, SWCA Environmental Consultants, pers. comm. 2010), includes 35 units, totaling 6,906 ac (2,795 ha), with 13 units that were not previously designated. This proposed rule results in an increase of 5,843 ac (2,365 ha) from the currently designated critical habitat (1,063 ac in 22 units). Seven new units are being proposed around Camp Bullis. We are also proposing four new units that were previously excluded on Government Canyon State Natural Area (GCSNA).

(2) Areas where the Government Canyon Bat Cave meshweaver and the Government Canyon Bat Cave spider occur on the GCSNA were previously excluded from the 2003 final critical habitat designation (68 FR 17155; April 8, 2003). In the 2003 designation, we determined that these areas did not meet the definition of critical habitat found in section 3(5)(A)(i) of the Act because the conservation plans for the caves on GCSNA provided adequate management and protection to the level that the area did not require special management. However, the Courts have invalidated this approach. In *Center for Biological Diversity* v. *Norton* (240 F.Supp.2d 1090 (D. Ariz. 2003)), the Court stated the actual presence of a management plan shows that special management is needed. Accordingly, we have reassessed whether these areas meet the definition of critical habitat in light of the Court's ruling. We have determined these areas meet the definition of critical habitat and have included them in this proposal (*see* Proposed Critical Habitat Designation section below).

(3) This proposal critical habitat rule includes a larger subterranean area around each occupied feature than the previous final rule (68 FR 17155; April 8, 2003). In this proposed rule, we use a distance of 0.3 mi (0.5 km) from occupied features in Karst Zone 1 as a criterion to delineate critical habitat. We base this distance on the karst geology and species genetics of Bexar County karst invertebrates (White 2006, pp. 76–78) and have better information available today (*see Subsurface Environment* above). In the 2003 final rule (68 FR 17155; April 8, 2003), we did not use a similar criterion, but stated that the distance that these invertebrates go from the cave into the surrounding karst is unknown.

(4) We increased the cave cricket foraging area from 164 ft (50 m) in the 2003 final rule (68 FR 17155; April 8, 2003) to 344 ft (105 m) in this proposed rule based on the Taylor *et al.* (2005, p. 97) study. In addition, we increased the minimum vegetation area in each unit from 40 ac (16 ha) to 100 ac (40 ha) based on the Draft Bexar County Karst Invertebrate Recovery Plan (2008, p. B–7). We use a combination of woodland, grassland, and a buffer area to protect against edge effects in this proposed rule.

(5) We are proposing as critical habitat all occupied sites for the nine Bexar County invertebrates except those that meet the criteria for exemption, as all of these sites are essential to the conservation of the species.

**Proposed Critical Habitat Designation**

We are proposing 35 units as critical habitat for the nine Bexar County invertebrates. For comparison, we numbered the units so that they are as consistent as possible with the previous proposed and final critical habitat rules. However, there are 13 additional units. Most additional units were assigned the next highest number, but those adjacent to Camp Bullis were assigned alphanumeric designations. For example, 10a and 10b were assigned to show their relationship to the previously proposed habitat on Camp Bullis. The critical habitat areas described below constitute our current best assessment of areas that meet the definition of critical habitat for the nine Bexar County invertebrates. All units we are proposing for the nine Bexar County invertebrates were occupied at the time of listing and are still currently occupied. Table 2 lists the proposed units, occupied caves, unit ownership, and listed species in each unit.

TABLE 2—UNIT NUMBER, NAMES OF KNOWN OCCUPIED CAVES, UNIT SIZE, LAND OWNERSHIP, AND LISTED SPECIES THAT OCCUR WITHIN EACH PROPOSED CRITICAL HABITAT UNIT

| Unit | Known occupied caves in unit | Size of unit in acres (hectares) | Land owner-ship type | Listed species in unit |
|---|---|---|---|---|
| 1a | Bone Pile Cave<br>Surprise Sink | 238 ac (96 ha) | State | *R. infernalis.*<br>*C. madla.* |
| 1b | Government Canyon<br>Bat Cave | 178 ac (72 ha) | State | *C. vespera.*<br>*N. microps.*<br>*R. exilis..*<br>*R. infernalis.* |
| 1c | Lost Pothole | 178 ac (72 ha) | State | *C. madla.* |
| 1d | Dancing Rattler Cave<br>Lithic Ridge Cave<br>Hackberry Sink | 349 ac (141 ha) | State | *C. madla.*<br>*R. exilis.*<br>*R. infernalis.* |
| 1e | Canyon Ranch Pit*<br>Continental Park Cave<br>Creek Bank Cave<br>Fat Man's Nightmare Cave*<br>Pig Cave<br>San Antonio Ranch Pit<br>Scenic Overlook Cave*<br>Tight Cave | 690 ac (279 ha) | State<br>City<br>Private | *R. infernalis.*<br>*R. exilis.*<br>*B. venyivi.*<br>*C. madla.* |
| 1f | 10K Cave | 178 ac (72 ha) | State | *R. infernalis.* |
| 2 | Logan's Cave<br>Madla's Drop Cave | 252 ac<br>(102 ha) | Private | *C. madla.*<br>*R. exilis.*<br>*R. infernalis.* |
| 3 | Helotes Blowhole*<br>Helotes Hilltop Cave* | 125 ac (51 ha) | Private | *C. madla.*<br>*R. exilis.*<br>*R. infernalis.*<br>*B. venyivi.* |

TABLE 2—UNIT NUMBER, NAMES OF KNOWN OCCUPIED CAVES, UNIT SIZE, LAND OWNERSHIP, AND LISTED SPECIES THAT OCCUR WITHIN EACH PROPOSED CRITICAL HABITAT UNIT—Continued

| Unit | Known occupied caves in unit | Size of unit in acres (hectares) | Land owner-ship type | Listed species in unit |
|---|---|---|---|---|
| 4 | Kamikazi Cricket Cave | 255 ac (103 ha) | Private | *R. exilis.* |
| | Mattke Cave | | | *R. infernalis.* |
| | Scorpion Cave | | | |
| 5 | Christmas Cave | 117 ac (47 ha) | Private | *C. madla.* |
| | | | | *R. exilis.* |
| | | | | *R. infernalis.* |
| | | | | *B. venyivi.* |
| 6 | John Wagner Ranch | 105 ac (42 ha) | Private | *C. madla.* |
| | Cave No. 3 * | | City | *R. exilis.* |
| | | | | *R. infernalis.* |
| 7 | Young Cave No. 1 | 158 ac (64 ha) | Private | *R. exilis.* |
| 8 | Three Fingers Cave | 471 ac (191 ha) | Private | *C. madla.* |
| | Hills and Dales Pit * | | City | *R. infernalis.* |
| | Robber's Cave | | | *R. exilis.* |
| 9 | Mastodon Pit | 286 ac (116 ha) | State | *C. madla.* |
| | Feature No. 50 | | Private | *R. exilis.* |
| | La Cantera Cave No. 1 | | | |
| | La Cantera Cave No. 2 | | | |
| 10a | Low Priority Cave [1] | 67 ac (27 ha) | City Private | *R. infernalis.* |
| 10b | Flying Buzzworm Cave [1] | 66 ac (27 ha) | City | *R. infernalis.* |
| 11a | Up The Creek Cave [1] | 21 ac (8.5 ha) | Private | *R exilis.* |
| 11b | Bunny Hole [1] | 16 ac 6.5 ha | Private | *R. exilis.* |
| 11c | Poor Boy Baculum Cave [1] | 21 ac 8.5 ha | Private | *R exilis.* |
| 11d | Root Toupee Cave [1] | 52 ac | Private | *R. exilis.* |
| | | 21 ha | | |
| 11e | Blanco Cave | 102 ac (41 ha) | Private | *R. exilis.* |
| 12 | Hairy Tooth Cave | 371 ac (150 ha) | Private | *R. exilis.* |
| | Ragin' Cajun Cave | | | |
| 13 | Black Cat Cave | 187 ac (76 ha) | Private | *R. exilis.* |
| 14 | Game Pasture Cave No. 1 | 330 ac (134 ha) | Private | *R. infernalis.* |
| | King Toad Cave | | | |
| | Stevens Ranch Trash Hole Cave | | | |
| 15 | Braken Bat Cave | 339 ac (137 ha) | Private | *C. venii.* |
| | Isopit | | | *R. infernalis.* |
| | Obvious Little Cave | | | |
| | Wurzbach Bat Cave | | | |
| 16 | Caracol Creek Coon Cave | 194 ac (76 ha) | Private | *R. infernalis.* |
| 17 | Madla's Cave * | 114 ac (46 ha) | Private | *C. madla.* |
| | | | | *R. infernalis.* |
| 19 | Genesis Cave | 142 ac (57 ha) | Private | *R. infernalis.* |
| 20 | Robber Baron Cave | 247 ac (100 ha) | Private | *T. cokendolpheri.* |
| | | | | *C. baronia.* |
| 21 | Hornet's Last Laugh Pit | 396 ac (160 ha) | City | *R. exilis.* |
| | Kick Start Cave | | Private | |
| | Springtail Crevice | | | |
| 22 | Breathless Cave | 178 ac (72 ha) | City | *C. madla.* |
| | | | Private | |
| 23 | Crownridge Canyon Cave | 178 ac (72 ha) | City | *R. infernalis.* |
| | | | Private | |
| 24 | Peace Pipe Cave [1] | 11 ac (4.5 ha) | Private | *R. exilis.* |
| 25 | OB3 | 177 ac (72 ha) | Private | *C. baronia.* |
| 26 | Max and Roberts Cave | 117 ac (47 ha) | Private | *R. infernalis.* |
| Totals | 62 caves 35 Units | 6,906 ac (2,795 ha). | | |

* Indicates caves and associated lands managed under the La Cantera HCP.
[1]. Cave is located on Camp Bullis; proposed critical habitat is outside Camp Bullis but most likely includes mesocaverns of the cave.
**Note:** Area sizes may not sum due to rounding.

Table 3 shows whether the critical habitat units were known to be occupied at the time of listing. At the time of listing, we were unaware of several caves or whether some of the caves we did know about were occupied. Therefore, a "No" is listed in Table 3 for units where surveys had not yet been conducted or the species had not yet been found in previous surveys. All units are currently occupied.

TABLE 3—OCCUPANCY OF ONE OR MORE OF THE NINE BEXAR COUNTY INVERTEBRATES BY PROPOSED CRITICAL HABITAT UNITS

| Unit | Known to be occupied at time of listing? | Currently occupied? |
|---|---|---|
| 1a | Yes | Yes. |
| 1b | Yes | Yes. |
| 1c | Yes | Yes. |
| 1d | Yes | Yes. |
| 1e | No | Yes. |
| 1f | No | Yes. |
| 2 | Yes | Yes. |
| 3 | Yes | Yes. |
| 4 | Yes | Yes. |
| 5 | Yes | Yes. |
| 6 | Yes | Yes. |
| 7 | Yes | Yes. |
| 8 | Yes | Yes. |
| 9 | Yes | Yes. |
| 10a | Yes | Yes. |
| 10b | Yes | Yes. |
| 11a | Yes | Yes. |
| 11b | Yes | Yes. |
| 11c | Yes | Yes. |
| 11d | No | Yes. |
| 11e | No | Yes. |
| 12 | Yes | Yes. |
| 13 | Yes | Yes. |
| 14 | Yes | Yes. |
| 15 | Yes | Yes. |
| 16 | Yes | Yes. |
| 17 | Yes | Yes. |
| 19 | Yes | Yes. |
| 20 | Yes | Yes. |
| 21 | No | Yes. |
| 22 | No | Yes. |
| 23 | No | Yes. |
| 24 | No | Yes. |
| 25 | No | Yes. |
| 26 | No | Yes. |

Table 4 shows the units and total area of proposed critical habitat for each of the nine Bexar County invertebrates.

TABLE 4—UNIT NUMBER AND TOTAL AREA OF PROPOSED CRITICAL HABITAT FOR EACH OF THE NINE BEXAR COUNTY INVERTEBRATES

| Listed species | Critical habitat unit(s) | Total area of critical habitat acres (hectares) |
|---|---|---|
| *R. exilis* (ground beetle, no common name) | 1b, 1d, 1e, 2, 3, 4, 5, 6, 7, 8, 9, 11a, 11b, 11c, 11d, 11e, 12, 13, 21, 24. | 4,163 ac (1,684 ha). |
| *R. infernalis* (ground beetle, no common name) | 1a, 1b, 1d, 1e, 1f, 2, 3, 4, 5, 6, 8, 10a, 10b, 14, 15, 16, 17, 19, 23, 26. | 4,505 ac (1,823 ha). |
| Helotes mold beetle (*B. venyivi*) | 1e, 3, 5 | 932 ac (377 ha). |
| Cokendolpher Cave harvestman (*T. cokendolpheri*) | 20 | 247 ac (100 ha). |
| Robber Baron Cave meshweaver (*C. baronia*) | 20, 25 | 424 ac (172 ha). |
| Madla Cave meshweaver (*C. madla*) | 1a, 1c, 1d, 1e, 2, 3, 5, 6, 8, 9, 17, 22. | 3,103 ac (1,256 ha). |
| Braken Bat Cave meshweaver (*C. venii*) | 15 | 339 ac (137 ha). |
| Government Canyon Bat Cave meshweaver (*C. vespera*) | 1b | 178 ac (72 ha). |
| Government Canyon Bat Cave spider (*N. microps*) | 1b | 178 ac (72 ha). |

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the nine Bexar County invertebrates below.

*Unit 1a*

We are proposing to designate 238 ac (96 ha) of State-owned land in Unit 1a located in northwestern Bexar County in the northwestern part of Government Canyon State Natural Area (GCSNA) in the Government Canyon KFR for the Madla Cave meshweaver and *R. infernalis*. The GCSNA is an area of

approximately 8,622 ac (2,688 ha) owned and managed by the Texas Parks and Wildlife Department (TPWD). The GCSNA is accessible to the public under certain restrictions. This unit is all undeveloped native woodland and is crossed by a wet weather stream and a trail. Unit 1a contains Surprise Sink Cave, which is occupied by Madla Cave meshweaver and *R. infernalis,* and Bone Pile Cave, which is occupied by *R. infernalis.* The Surprise Sink Cave may also be occupied by Government Canyon Bat Cave spider, but the specimen collected has not been confirmed (Zara 2010, p. 2). The caves in this unit were occupied at the time of listing, and the unit contains all the PCEs for the species.

The main threat in this unit is infestation of fire ants. The GCSNA currently has a management plan in place that includes treating for fire ants and managing for the benefit of the Madla Cave meshweaver and *R. infernalis.*

The unit was delineated by drawing a radius of 0.3 mi (0.5 ha) around each of the two caves and connecting the edges of the overlapping circles. Unit 1a is all Karst Zone 1.

*Unit 1b*

In Unit 1b, we are proposing 178 ac (72 ha) of State-owned land located in northwest Bexar County in the western portion of the GCSNA in the Government Canyon KFR for the Government Canyon Bat Cave meshweaver, Government Canyon Bat Cave spider, *R. exilis,* and *R. infernalis.* Land within the proposed unit consists of undeveloped native vegetation. However, there are several one-lane gravel roads that serve primarily as pedestrian trails within the State natural area. A small portion of the vegetation appears to have been cleared for ranching prior to TPWD ownership. The unit contains one cave, Government Canyon Bat Cave, which is the only known cave occupied by the Government Canyon Bat Cave meshweaver. The cave is also occupied by Government Canyon Bat Cave spider, *R. exilis,* and *R. infernalis.* The Government Canyon Bat Cave was occupied at the time of listing, and the unit contains all the PCEs.

The main threat to species in this unit is infestation of fire ants. While GCSNA currently has a management plan in place that includes treating for fire ants and managing for the benefit of the species.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave. The unit is all Karst Zone 1.

*Unit 1c*

We are proposing 178 ac (72 ha) of State-owned land in Unit 1c located in northwestern Bexar County in the central part of GCSNA in the Government Canyon KFR for the Madla Cave meshweaver. This unit is primarily undeveloped native woodland that is crossed by a hiking trail. There is only one cave in this unit, Lost Pothole Cave. The cave was occupied at the time of listing, and the unit contains all the PCEs for the species. A small amount of the woody vegetation in this unit has been cleared in the past for ranching prior to TPWD ownership.

The main threat to the cave is infestation of fire ants. While GCSNA currently has a management plan in place that includes treating for fire ants and managing for the benefit of the species.

This unit was delineated by drawing a 0.3-mi (0.5-km) radius around the cave. The entire unit is Karst Zone 1.

*Unit 1d*

In Unit 1d, we are proposing 349 ac (141 ha) of State-owned land located in northwestern Bexar County in the central part of the GCSNA in the Government Canyon KFR for the Madla Cave meshweaver, *R. exilis,* and *R. infernalis* . This unit is wooded and undeveloped. The unit is primarily native vegetation, but small portions of the unit appear to have been thinned in the past for ranching prior to TPWD ownership. Unit 1d contains three caves: Dancing Rattler Cave, Lithic Ridge Cave, and Hackberry Sink. The Lithic Ridge Cave is occupied by Madla Cave meshweaver, *R. exilis,* and *R. infernalis.* The Dancing Rattler Cave and Hackberry Sink are occupied by *R. infernalis.* The caves in this unit were occupied at the time of listing and contain all the PCEs for the species.

The main threat to the unit is infestation of fire ants, but the GCSNA currently has a management plan in place that includes treating for fire ants.

This unit was delineated by drawing a 0.3-mi (0.5-km) radius around each of the three caves and connecting the edges of the overlapping circles. The entire unit is Karst Zone 1.

*Unit 1e*

We are proposing 690 ac (279 ha) in Unit 1e in northwestern Bexar County that includes the northeastern part of State-owned GCSNA, adjacent City of San Antonio-owned land, and private land in the Government Canyon KFR for the Madla Cave meshweaver, *R. infernalis, R. exilis,* and Helotes mold beetle. The majority of Unit 1e consists of undeveloped land with the exception of several small private and/or county roads. Woody vegetation has been thinned for ranching on a small area of the northeastern part of the unit. Unit 1e contains eight caves. Four caves are occupied by Madla Cave meshweaver (Fat Man's Nightmare Cave, Pig Cave, San Antonio Ranch Pit, and Scenic Overlook Cave). Fat Man's Nightmare Cave is also occupied by *R. infernalis;* Pig Cave is also occupied by *R. infernalis* and *R. exilis;* San Antonio Ranch Pit is occupied by *R. infernalis, R. exilis,* and Helotes mold beetle; and Scenic Overlook Cave is occupied by *R. infernalis* and Helotes mold beetle. The unit also contains Canyon Ranch Pit and Continental Park Cave, which are occupied by *R. infernalis,* Creek Bank Cave occupied by *R exilis,* and Tight Cave occupied by *R. exilis* and Helotes mold beetle. It is not known if the caves were occupied at the time of listing, but they currently are, and the unit contains all the PCEs for the species.

The major threats to the unit are infestation of fire ants and vandalism from unauthorized access. Five of the caves in this unit are owned by GCSNA, and they currently have a management plan in place that includes treating for fire ants and managing for the benefit of the species.

Three of the eight known occupied caves within this unit and their associated preserve lands are being considered for exclusion. The 75-ac (30-ha) Canyon Ranch Preserve, which was acquired and is managed by La Cantera under their HCP, contains Canyon Ranch Pit, Fat Man's Nightmare Cave, and Scenic Overlook Cave. According to the La Cantera HCP, these three caves and the surrounding preserve lands will be managed in perpetuity for the conservation of the species.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around each of the eight caves and joining the edges of the overlapping circles. The entire unit is Karst Zone 1.

*Unit 1f*

For Unit 1f, we are proposing 178 ac (72 ha) of State-owned land in northwest Bexar County in the southeastern part of the GCSNA in the Government Canyon KFR for *R. infernalis.* The unit is entirely native woodland, but a small amount appears to have been cleared in the past for ranching prior to TPWD ownership. It contains only one cave, which is named 10k Cave. We do not know if the cave was occupied at the time of listing, but it is currently, and the unit contains all the PCEs for the species.

The major threats to Unit 1f are infestation of fire ants. The GCSNA currently has a management plan in place that includes controlling fire ants and managing for the benefit of the species.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave. The unit is all Karst Zone 1.

*Unit 2*

We are proposing 252 ac (102 ha) of private land in Unit 2 located in northwestern Bexar County north of Bandera Road and southeast of High Bluff Road in the Helotes KFR for Madla Cave meshweaver, *R. infernalis,* and *R. exilis.* This unit contains a mix of large, wooded tracts with several residential buildings, cleared areas, a quarry on the southeastern edge, and private or county roads. The entire unit is private land.

Unit 2 contains two caves. The Madla's Drop Cave is occupied by Madla Cave meshweaver and *R. infernalis.* This unit also contains Logan's Cave, which is occupied by *R. infernalis* and *R. exilis.* These caves were occupied at the time of listing, and parts of the unit contain all the PCEs for the species. There are two paved roads that cross the cave cricket foraging area of this unit and act as barriers to cricket movement.

This unit requires special management because of residential development. Threats include the potential for destruction of habitat from vandalism, contamination of the subsurface drainage area of the unit, drying of karst, reduction of nutrient input, and infestation of fire ants.

This unit was delineated constructing a 0.3-mi (0.5-km) radius around each of the two caves and connecting the edges of the overlapping circles. Areas of Karst Zone 3 karst along the western, northwestern, and southern portions of the unit were removed in order to substantially reduce fragmentation of the unit. The rest of Unit 2 is Karst Zone 1.

*Unit 3*

For Unit 3, we are proposing 125 ac (51 ha) of private land in northwestern Bexar County, east of Bandera Road and northwest of Scenic Loop in the Helotes KFR for the Madla Cave meshweaver, *R. infernalis, R. exilis,* and Helotes mold beetle. The unit contains relatively large, wooded tracts. This unit contains two caves, Helotes Blowhole and Helotes Hilltop. The Helotes Blowhole is occupied by Madla Cave meshweaver, *R. infernalis,* and *R. exilis.* The Helotes Hilltop Cave is occupied by Madla Cave meshweaver, *R. exilis,* and Helotes mold beetle. Both caves were occupied at the time of listing, and the unit contains all the PCEs for the species.

Threats include the potential for destruction of habitat from vandalism, contamination of the subsurface drainage area of the unit, and infestation of fire ants. In addition, the land along the northern side of the unit has been developed with residential homes. Unit 3 contains several small residential roads and is crossed by Bandera Road, a four-lane divided highway, in its southwestern corner. This unit does not include the entire 344-ft (105-m) cave cricket foraging area around Helotes Hilltop Cave in Karst Zone 3 because there is a paved road creates a barrier to cave cricket movement.

This unit was delineated by drawing a 0.3-mi (0.5-km) radius around each of the two caves and following the edge of Karst Zone 1 (Veni 2003) within the overlapping circles. Some areas of Zone 3 are included along the eastern boundary of the unit to include more of the cave cricket foraging area for Helotes Hilltop Cave. Areas of Zone 3 along all but a part of the northern portion of the unit were removed. The rest of Unit 3 is Karst Zone 1.

This unit is being considered for exclusion, because the two caves and the approximately 25 ac (10-ha) of land surrounding the caves were acquired under the La Cantera HCP. These caves and the surrounding preserve lands will be managed in perpetuity for the conservation of the species. The remainder of the unit requires special management because of the presence of roads and residential development.

*Unit 4*

For Unit 4, we are proposing 255 ac (103 ha) of private land in northwestern Bexar County, west of the intersection of Scenic Loop and Cross XD Road in the UTSA KFR for *R. exilis* and *R. infernalis.* Tower View Road and Cash Mountain Road cross the northern part of the unit, and Rafter S and Cross XD cross the southern part. Unit 4 contains three caves. The Kamikazi Cricket Cave is occupied by *R. exilis* and *R. infernalis.* The Mattke and Scorpion Caves are occupied by *R. infernalis.* These three caves were occupied at the time of listing, and parts of the unit contain all the PCEs for the species.

Several threats impact this unit, including the potential for destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst areas, reduction of nutrient input, and infestation of fire ants. In addition, this unit contains several residential roads, but no major roadways or highways. Lands surrounding Unit 4 consist of relatively large, residential tracts. The unit requires special management because of threats from existing and potential future residential development.

The unit was delineated by drawing a radius of 0.3-mi (0.5-km) around each of the three caves and removing most areas of Karst Zone 3 from the unit. Large portions of the northern, southern, and western edges of Karst Zone 3 inside the circle were removed. Some areas of Karst Zone 3 were included along the western, northern, and southern edges of the cave cricket protection areas of Kamikaze Cricket and Mattke Caves. The remainder of the unit is Karst Zone 1. The unit was expanded beyond the 0.3 mi (0.5 km) area to the east and south of Kamikaze Cricket Cave and to the north and east of Mattke and Scorpion Caves in order to include at least 100 ac (40 ha) of native vegetation.

*Unit 5*

In Unit 5, we are proposing 117 ac (47 ha) of private land in northwestern Bexar County, northwest of Cedar Crest Drive and north of Madla Ranch Road in the Helotes KFR for the *R. exilis, R. infernalis,* Helotes mold beetle, and Madla Cave Meshweaver. The unit contains a large tract of undeveloped woodland and several smaller, wooded tracts developed with homes and associated residential roads. This unit contains one cave, Christmas Cave, which is occupied by *R. exilis, R. infernalis,* Helotes mold beetle, and Madla Cave Meshweaver. The cave was occupied at the time of listing and parts of the unit contain all the PCEs for the species. However, there are homes and associated roads within the cave cricket foraging area of the cave.

The unit requires special management because of the presence of residential development and impending future development. Threats include the potential for destruction of habitat from development and vandalism, contamination of the subsurface drainage area of the unit, reduction of moisture and nutrients, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave entrance and following the edge of Karst Zone 1 within the circle. Some areas of Zone 3 are included along the southeastern boundary of the unit to include the cave cricket foraging area for Christmas Cave. The rest of Unit 5 is Karst Zone 1.

*Unit 6*

For Unit 6, we are proposing 105 ac (42 ha) of private and City of San Antonio-owned land located in

northwestern Bexar County, bordered to the south by Menchaca Road and to the west by Morningside Drive in the UTSA KFR for the Madla Cave meshweaver, *R. exilis,* and *R. infernalis.* Unit 6 consists primarily of large, undeveloped, woodland tracts with several smaller areas developed with homes. The John Wagner Ranch Cave No. 3 is the only cave in this unit, and it is occupied by Madla Cave meshweaver, *R. exilis,* and *R. infernalis.* The cave was occupied at the time of listing, and the unit contains all the PCEs for species.

Threats to the unit include the potential for destruction of habitat from potential future development and vandalism, contamination of the subsurface drainage area of the unit, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around John Wagner Ranch Cave No. 3 and following the general boundary of Karst Zone 1, primarily the northeastern quadrant of the circle. A portion of the cave cricket foraging and protection area in Karst Zone 3 was included in the unit. The majority of land included in Unit 6 is in Karst Zone 1. The unit was expanded slightly outside the 0.3-mi (0.5-km) radius to the northern to eastern edge of the unit in order to include a minimum of 100 ac (40 ha) of native vegetation.

The John Wagner Ranch Cave No. 3 and approximately 4 ac (1.6 ha) surrounding the cave were acquired as part of the La Cantera HCP. Therefore, the cave and surrounding preserve lands will be managed in perpetuity for the conservation of the species. This part of the unit is being considered for exclusion in the final critical habitat rule.

*Unit 7*

We are proposing 158 ac (64 ha) of private land in Unit 7 located in northwestern Bexar County, south of Babcock Road near the intersection of Cielo Vista Drive and Luna Vista in the UTSA KFR for *R. exilis.* The unit is largely wooded, but there is some development in the north and eastern parts of the unit. Unit 7 contains one cave known as Young Cave No. 1 and it is occupied by *R. exilis.* The cave was occupied at the time of listing, and the unit contains all the PCEs for the species.

This unit requires special management because of residential development. There is a new road, Camino del Sol, which ends east of Young Cave No. 1, and is located within the cave cricket foraging area. Also, residential homes are located on the south part of this unit in the cave cricket protection area. Other threats include the potential for destruction of habitat from vandalism and new construction, contamination of the subsurface drainage area, drying of karst features, reduction of nutrient input, and infestation of fire ants.

Unit 7 was delineated by drawing a radius of 0.3 mi (0.5 km) around Young Cave No. 1 and including the general boundary of Karst Zone 1 in the circle. A portion of the cave cricket foraging and protection area in Karst Zone 3 is included in the unit.

*Unit 8*

In Unit 8, we are proposing 471 ac (191 ha) of private and City of San Antonio's Medallion Park land located in northwestern Bexar County in the UTSA KFR for the Madla Cave meshweaver, *R. exilis,* and *R. infernalis.* The unit is bordered on the northwest by Kyle Seale Parkway, on the northeast by Moss Brook Drive, and on the south by Cotton Trail Lane. Some of the land is undeveloped woodland, but some areas on the edges of the unit have been developed or have been cleared for future development. This unit contains three caves: Three Fingers Cave, Hills and Dales Pit, and Robber's Cave. The Hills and Dales Pit and Robber's Cave are occupied by Madla Cave meshweaver, *R. exilis,* and *R. infernalis.* The Three Fingers Cave is occupied by *R. exilis* and *R. infernalis.* This unit was occupied at the time of listing, and portions of the unit contain all the PCEs for the species.

The southeastern, extreme southern, northeastern, and northwestern portions of this unit have been subdivided and developed with homes. Several roads cross the unit. The extreme southern portion of the unit has higher density development. Part of the unit has been developed with residential roads, but it currently contains no homes. Threats in this unit include the potential for destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features, reduction of nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around each of the three caves and connecting the resulting overlapping circles. Unit 8 is entirely Karst Zone 1.

The Hills and Dales Pit and approximately 70 ac (28 ha) surrounding the cave have been acquired as part of the La Cantera HCP. Therefore, the cave and surrounding preserve lands will be managed in perpetuity for the conservation of the species. This area is being considered for exclusion from the final critical habitat rule.

*Unit 9*

For Unit 9, we are proposing 286 ac (116 ha) of State and private land in north-central Bexar County on both sides of Loop 1604 and east of the Loop 1604 intersection with IH 10 in the UTSA KFR for the Madla Cave meshweaver and *R. exilis.* There is a large tract of undeveloped woodland to the south and dense commercial development in the north. Also, this unit has a major shopping mall in the northwestern area. The unit is bordered to the west by the University of Texas at San Antonio campus and to the east by commercial development. Unit 9 contains four caves: Mastodon Pit, Feature No. 50, La Cantera Cave No. 1, and La Cantera Cave No. 2. La Cantera Cave No. 1 is occupied by Madla Cave meshweaver and *R. exilis.* Feature No. 50 is occupied by Madla Cave meshweaver. The two other caves, Mastodon Pit and La Cantera Cave No. 2, contain only *R. exilis.* All four caves were occupied at the time of listing, and the southern part of the unit has all of the PCEs for the species. Most of the northern part of the unit does not contain the PCE of a healthy surface community of native plants and animals. We are proposing it on the basis that it contains the PCE of karst-forming rock containing subterranean spaces.

Because of the commercial development and roadways that border and cross the unit, Unit 9 requires special management. Threats include the potential for destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features from impervious cover, reduction of nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around each of the four caves and connecting the resulting overlapping circles. The majority of the land included in Unit 9 is Karst Zone 1.

*Unit 10a*

We are proposing 67 ac (27 ha) of private and City of San Antonio's Eisenhower Park land in Unit 10a located in north central Bexar County outside the easternmost portion of the southern boundary of Camp Bullis (a military reservation) in the Stone Oak KFR for *R. infernalis.* The eastern part of the unit is in the City of San Antonio's Eisenhower Park, which is used for picnicking, camping, hiking, jogging, and nature study. The

remainder of the unit is in private ownership. The unit is almost entirely undeveloped, but contains some unpaved roads and hiking trails. This unit was occupied at the time of listing, and contains all the PCEs of the species.

The Low Priority Cave is located on Camp Bullis and contains *R. infernalis.* However, the Low Priority Cave's entrance is not included in the unit (since it is exempt under section 4(a)(3) of the Act; *see* Exemptions below), but its drainages are included in this unit.

The unit requires special management because of human use of the park and possible future development on private land and the presence of trails and a secondary roadway in the unit. Threats include the potential for destruction of surface vegetation, contamination of the subsurface drainage area of the unit, and infestation of fire ants.

Unit 10a was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave entrance and removing the portion of the circle within Camp Bullis. Camp Bullis was removed according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). The unit is all Karst Zone 1.

*Unit 10b*

In Unit 10b, we are proposing 66 ac (27 ha) of the City of San Antonio's Eisenhower Park in north-central Bexar County, east of Unit 10a and along the southern boundary of Camp Bullis in the Stone Oak KFR for *R. infernalis.* The unit is mostly wooded and is entirely in the City of San Antonio's Eisenhower Park. The Flying Buzzworm Cave, which contains *R. infernalis,* is located on Camp Bullis. An immature blind *Cicurina* has been collected from the cave, but has not been identified to species. The cave was occupied at the time of listing. Unit 10b contains the PCEs for the species.

The unit requires special management because of human use of the park and the presence of trails and a secondary roadway in the unit. Threats include the potential for destruction of surface vegetation, contamination of the subsurface drainage area of the unit, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave entrance and removing the portion of the circle within Camp Bullis according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). Therefore, the Flying Buzzworm Cave's entrance is not included in the unit, but its drainages and mesocaverns are. A small area of Karst Zone 2 was also removed because it was not in the cave cricket foraging area. Unit 10b contains part of its cave cricket foraging area and contiguous Karst Zone 1.

*Unit 11a*

We are proposing 21 ac (8.5 ha) of private land in Unit 11a in north-central Bexar County, outside the southern boundary of Camp Bullis, and southeast of Wilderness Road in the Stone Oak KFR for *R. exilis.* This unit is primarily undisturbed native vegetation. An unnamed road borders the unit on the northern boundary and crosses it close to its western edge. Two buildings are located in the northeastern and northwestern corners of the unit. Up the Creek Cave is located on adjacent Camp Bullis and contains *R. exilis.* The cave was occupied at the time of listing, and the unit contains all the PCEs for the species.

The unit requires special management because of the potential for trespassing and future development. Threats include destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features from impervious cover, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave and including all Karst Zone 1 outside of Camp Bullis in the resulting circle. Camp Bullis was removed according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). The southwest portion along the edge of the circle was not included because it is Karst Zone 2. Even though the cave's entrance is not included in this unit, its drainages and mesocaverns are. The resulting unit is all Karst Zone 1.

*Unit 11b*

We are proposing 16 ac (6.5 ha) of private land in Unit 11b in north-central Bexar County in the Stone Oak KFR for *R. exilis.* The unit is outside the southern boundary of Camp Bullis and is east of unit 11a. There are two small, cleared areas about 0.5 ac (0.2 ha) in size along the northern unit border, and vegetation appears to have been thinned in parts of the unit in the past. The unit is bordered on the north by an unnamed road. A cave called Bunny Hole, which is on adjacent Camp Bullis, is occupied by *R. exilis.* The cave was occupied at the time of listing, and the unit contains all of the PCEs for the species.

The unit requires special management because of the potential for future development. Threats include destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features from impervious cover, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave and including all Karst Zone 1 outside of Camp Bullis according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). The unit is all Karst Zone 1.

*Unit 11c*

We are proposing 21 ac (8.5 ha) of private land in Unit 11c outside the eastern boundary of Camp Bullis in north-central Bexar County in the Stone Oak KFR for *R. exilis.* Unit 11c contains a small amount of native vegetation and is crossed by Blanco Road along its western edge, a major north-south thoroughfare, and by Wilderness Oak and Ranch Oak Roads that cross the unit from east to west. The southern part of the unit has some commercial development. Poor Boy Bacculum Cave on adjacent Camp Bullis contains *R. exilis.* The cave was occupied at the time of listing. A portion of the unit has the surface PCEs for the species, but most of the unit contains only the PCE of subterranean karst-forming rock.

The unit requires special management because of the presence of existing roadways and commercial development and potential future development. Threats include destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features from impervious and water diversion, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave and including all Karst Zone 1 outside of Camp Bullis according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). Unit 11c is all Karst Zone 1.

*Unit 11d*

In Unit 11d, we are proposing 52 ac (21 ha) of private land located outside the eastern boundary of Camp Bullis in north-central Bexar County in the Stone Oak KFR for *R. exilis.* Unit 11d contains some landscaped areas, but it is crossed by Blanco Road on its western edge and by Goldcrest Run, a road parallel to Blanco Road and slightly to the east. Unit 11d contains a substantial amount of commercial development and a large parking lot. The unit does contain the first two PCEs, and has a few landscaped areas with some with trees,

but does not contain the PCE of healthy native surface vegetation. The Root Toupee Cave, which is on adjacent Camp Bullis, contains *R. exilis.* We do not know if the cave was occupied at the time of listing, but it currently is. We are proposing it as critical habitat in order to provide protection for the mesocaverns and other subsurface features.

The unit requires special management because of due to the presence of existing roadways, commercial development, and potential future development. Threats include destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features from impervious cover and storm water diversion, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave and including all Karst Zone 1 outside of Camp Bullis according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). Unit 11d is entirely Karst Zone 1.

*Unit 11e*

In Unit 11e, we are proposing 102 ac (41 ha) of private land outside the eastern boundary of Camp Bullis in north-central Bexar County for *R. exilis.* Unit 11e contains a substantial amount of residential development with landscaped areas and is crossed by Blanco Road on its western edge, Cardigan Chase Road near its eastern edge, and Calico Chase Road across most of its central portion. Blanco Cave, located in the Blanco Road right-of-way, contains *R. exilis.* The cave was occupied at the time of listing, and only the area within Camp Bullis, which is being exempted, contains all the PCEs for the species.

The unit requires special management because of the presence of existing roadways, commercial development, and potential future development. Threats include destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3mi (0.5 km) around the cave and including all Karst Zone 1 outside of Camp Bullis within the resulting circle. Camp Bullis was exempted according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). Because it did not meet the criteria for delineating critical habitat, an area of Zones 2 and 3 was removed from the northern part of the arc. The portion of the circle within Camp Bullis (west of the unit) contains the PCE of healthy native surface vegetation. The unit is all Karst Zone 1.

*Unit 12*

In Unit 12, we are proposing 371 ac (150 ha) of private land in north-central Bexar County, east of the intersection of U.S. Highway 281 and Evans Road in the Stone Oak KFR for *R. exilis.* The unit is bordered to the east by U.S. Highway 281, to the south by a quarry and to the west by a school and some residential development. Evans Road, another major roadway, crosses the north central part of the unit. With the exception of a U.S. 281 and its right of way and a small amount of floodway in the western portion and part of a middle school, the unit is in private ownership. Most of the unit has been developed as a single-family homes subdivision. The unit also includes some commercial development in the northeast portion. However, small amounts of undeveloped land are located in the southern, northern, and northwestern part of the unit.

Unit 12 contains the Hairy Tooth and Ragin' Cajun Caves, which are occupied by *R. exilis.* Both caves were occupied at the time of listing. This unit does contain the first two PCEs, but most of Unit 12 does not contain the PCE of a healthy surface native plant community near to the occupied caves. The cave cricket foraging areas are impacted by houses and streets. However, this area has been delineated to protect mesocaverns and other subsurface features that are necessary for the conservation of the species.

The unit requires special management because of the commercial development and roadways that border the unit. Threats include the potential for destruction of habitat from vandalism, future development, operation of a quarry, contamination of the subsurface drainage area of the unit, karst drying, reduction of nutrient input, and infestation of fire ants.

Unit 12 was delineated by drawing a radius of 0.3 mi (0.5 km) around each of the two caves and joining the edges of the two overlapping circles. A portion of the extreme southern area was removed from the unit because it contains an active quarry which has removed some of the karst, as the karst is covered only by a thin layer of soil in Karst Zone 1. The area to the north and northeast was expanded outside the 0.3 mi radius to include at least 100 ac (40 ha) of vegetation, necessary for units in areas with high surface impacts, as described in the *Criteria Used To Identify Critical Habitat* section above. All of Unit 12 is Karst Zone 1.

*Unit 13*

In Unit 13, we are proposing 187 ac (76 ha) of developed and undeveloped private land located in northeastern Bexar County in the Stone Oak KFR with the intersection of Bulverde Road and Ridgeway Drive at the middle of its northern edge for *R. exilis.* This unit contains one cave named Black Cat Cave. The cave was occupied by *R. exilis* at the time of listing, and part of the unit contains all the PCEs for the species. The cave opening is a short distance Bulverde Road, which crosses its cave footprint and cave cricket foraging area. The northern part of the unit, including about half of the cave cricket foraging area and protection area, is developed with dense residential development west of Bulverde Road, and a lower density subdivision to the east. Bulverde Road, a major two-lane roadway, crosses the middle of the unit from north to south. The southern part of the unit on both sides of Bulverde road is undeveloped. The southeastern part of the unit was expanded slightly to include at least 100 ac (40 ha) of native vegetation.

This unit requires special management because of residential development and roadways. Threats include the potential for destruction of habitat from vandalism, operation of a quarry, potential future development, contamination of the subsurface drainage area of the unit, drying of karst features from impervious cover and storm water diversion, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave. Additional undeveloped land was added to the unit outside the southeastern edge to include at least 100 ac (40 ha) of surface vegetation, necessary for units in areas with high surface impacts, as described in the *Criteria Used To Identify Critical Habitat* section above. All of Unit 13 is Karst Zone 1.

*Unit 14*

In Unit 14, we are proposing 330 ac (134 ha) of private land in western Bexar County, west of the end of Louis Agusta Drive in the Culebra Anticline KFR for *R. infernalis.* The unit includes several large tracts of undeveloped woodland. There is a major roadway, Stevens Parkway, in this unit, and it is in the process of being extended from the southwestern to western part of the unit. Some of the vegetation has been

cleared in the past for ranching. Three caves occur in this unit: Game Pasture Cave No. 1, Stevens Ranch Trash Hole Cave, and King Toad Cave. All three caves are known to contain *R. infernalis* and all were occupied at the time of listing. This unit contains all the PCEs of the species.

The unit requires special management because of potential future residential and commercial development and trespassing. Threats include the potential for destruction of surface vegetation and karst habitat, contamination of the subsurface drainage area of the unit, drying of karst features, reduction of nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around each of the three caves and connecting the edges of the resulting overlapping circles. Unit 14 is all Karst Zone 1.

*Unit 15*

In this unit, we are proposing 339 ac (137 ha) of private land located in western Bexar County, west of Talley Road and north of Farm to Market Road 1957 in the Culebra Anticline KFR for the Bracken Bat Cave meshweaver and *R. infernalis.* The majority of the lands within Unit 15 are within a subdivision, and all are privately owned. Tracts in the subdivision are relatively large and still contain wooded vegetation, but there is some high-density residential development in the eastern part of the unit. Some native vegetation remains in this unit, but the cave cricket foraging areas around all of the occupied caves have been fragmented by roads and houses. A substantial amount of the vegetation appears, from the examination of aerial photographs, to be nonnative landscaped grasses. This unit contains four caves: Braken Bat Cave, Isopit, Obvious Little Cave, and Wurzback Bat Cave. Bracken Bat Cave is the only one that contains the Bracken Bat Cave meshweaver. All four caves are known to contain *R. infernalis* and all were occupied at the time of listing. The undeveloped parts of this unit contain all the PCEs for the species.

The unit requires special management because of the proximity of development, the potential for destruction of habitat from vandalism, and the lack of a healthy surface community of plants and animals. Threats include potential future development, contamination of the subsurface drainage area of the unit, drying of karst, reduction of nutrient input, and infestation of fire ants.

This unit was delineated to encompass a 0.3 mi (0.5 km) area around each of the four caves and connecting the edges of the overlapping circles. All of Unit 15 is Karst Zone 1.

*Unit 16*

In Unit 16, we are proposing 194 ac (79 ha) of private land in western Bexar County in the Culebra Anticline KFR for *R. infernalis.* The Unit contains several large, primarily undeveloped tracts of woodland. However, Loop 1604, a major highway, bisects the eastern part of the unit. A high-density residential subdivision is in the eastern part of the unit, and a quarry is within the southern portion. With the exception of Loop 1604 and its cleared right-of-way, most of the remainder of the unit is vegetated. But, some vegetation in the northern and northwestern part of the unit has been removed for livestock grazing. The Caracol Creek Coon Cave is the only cave in this unit and it is occupied by *R. infernalis.* The unit was occupied at the time of listing, and part of the unit contains all the PCEs for the species. However, part of the cave's footprint is under Loop 1604, and the highway has impacted parts of the cave cricket foraging and protection areas.

The unit requires special management because of the proximity of roads, existing and potential future development. Threats include potential for destruction of habitat from vandalism, quarry operation, and potential new development, contamination of the subsurface drainage area of the unit, drying of karst features, reduction of nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave. The unit was expanded outside that distance to the west and northwest to include at least 100 ac (40 ha) of vegetation around the cave opening, necessary for units in areas with high surface impacts, as described in the *Criteria Used To Identify Critical Habitat* section above. Most of Unit 16 is Karst Zone 1, except a small part of Karst Zone 2 on its western edge.

*Unit 17*

In Unit 17, we are proposing 114 ac (46 ha) of private land in northwest Bexar County east of Scenic Loop Road and south of Madla Ranch Road in the Helotes KFR for the Madla Cave meshweaver and *R. infernalis.* The unit contains some houses and paved roads in the eastern portion, and one house in the southeastern portion. The unit contains one cave called Madla's Cave, which is occupied by Madla Cave meshweaver and *R. infernalis.* The cave was occupied at the time of listing, and the unit has all the PCEs of the species.

Madla's Cave and the surrounding approximately 5 ac (2 ha) has been acquired in accordance with the La Cantera HCP, which also requires that the cave and the surrounding preserve lands be managed in perpetuity for the conservation of the species. We are considering excluding this area under section 4(b)(2) of the Act because it falls under the La Cantera HCP. The remainder of the unit requires special management because of the presence of residential development and potential future development within the unit. Threats include the potential for destruction of habitat from new development and vandalism, contamination of the subsurface drainage area of the unit from future development, reduction of moisture and nutrient input, and infestation of fire ants.

The unit was delineated by drawing a a radius of 0.3 mi (0.5 km) around the cave and removing areas that are not Karst Zone 1 from the northern and southwestern parts of the resulting circle. However, some areas of Karst Zone 3 were left in the unit to encompass the cave cricket protection area and to reduce edge effects.

*Unit 19*

In Unit 19, we are proposing 142 ac (57 ha) of private land in north-central Bexar County near the intersection of Stone Oak Road and Loop 1604 in the Stone Oak KFR for *R. infernalis.* The majority of the unit has been developed for residential and/or commercial uses. The eastern part of Unit 19 is crossed by Stone Oak Road. Several other minor roadways and parking lots are scattered through the unit, and part of a golf course is in the northwestern section of the unit. There are some trees left in a neighborhood in the northern part of the unit, and a few trees are on the golf course. In addition, there is some landscaped grass surrounding Genesis Cave, the only cave in this unit. This cave is occupied by *R. infernalis.* The cave was occupied at the time of listing, but the unit does not contain the PCE of a healthy surface community of native plants and animals. However, we delineate this unit as it contains the first two PCEs, and in order to protect the mesocaverns and other subsurface karst features that are occupied.

The unit requires special management because of the high levels of residential and commercial development and high impervious cover within the unit. Threats include the potential for destruction of habitat from vandalism and future development, contamination of the subsurface drainage area of the unit, drying of karst features from

impervious cover and storm water diversion, reduced nutrient input, and infestation of fire ants.

The unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave entrance and removing areas that are not Karst Zone 1 from the southern and eastern parts of the unit. The unit is all Karst Zone 1.

*Unit 20*

In Unit 20, we are proposing 247 ac (100 ha) of private land located in north-central part of the City of San Antonio, south of Loop 410 West, and primarily along Nacogdoches Road northeast of Broadway in the Alamo Heights KFR for the Cokendolpher cave harvestman and Robber Baron Cave meshweaver. This unit contains one known occupied cave, Robber Baron Cave, which is the only known cave for the Cokendolpher cave harvestman. It is also one of only two caves known to be occupied by Robber Baron Cave meshweaver (OB3 in Unit 25 is the other cave). The Robber Baron Cave was occupied at the time of listing and is the longest cave in Bexar County, consisting of approximately 0.9 mi (1.5 km) of passages (Veni 2003, p. 19). The estimated footprint of the cave now underlies numerous residential and commercial developments. The Texas Cave Management Association (TCMA), a non-profit organization dedicated to the study and management of Texas cave resources, now owns and manages the cave and about 0.5 ac (0.2 ha) surrounding the opening.

The unit was occupied at the time of listing; however, surface vegetation within Unit 20 has been significantly reduced and degraded by urban development, and the only PCE remaining is karst-forming rock containing subterranean spaces. Lands within this unit do not contain the physical and biological features of a healthy surface community of native vegetation or of surface water free of pollutants. The unit requires special management because of the high levels of residential and commercial development within the unit. Threats include the potential for destruction of habitat from vandalism, soil compaction from cave visitation, lack of a healthy community of native plants and animals, contamination of the subsurface drainage area of the unit, drying of karst, and infestation of fire ants. Because of the extensive development, high levels of impervious cover, and diversion of storm water over the cave, intensive management may be needed to provide nutrients and water to the karst environment.

The unit was delineated to encompass the estimated extent of the cave's surface and subsurface drainage and all of the contiguous Karst Zone 1.

*Unit 21*

We are proposing 396 ac (160 ha) of private and City of San Antonio-owned land in Unit 21 in northeast Bexar County, northeast of the intersection of Evans Road and Stone Oak Parkway for *R. exilis.* The unit contains several large tracts of undeveloped land and several smaller tracts developed with homes and residential roads. Mud Creek runs through the unit, and part of Unit 21 is the pool area of a flood control reservoir owned by the City of San Antonio. The rest of the unit is in private ownership. Vegetation in the flood pool area is modified by periodic inundation and/or mechanical control by the City of San Antonio. The northern and northeastern part of the unit has dense residential development, while there is less dense development in the western portion. The southeastern corner of the unit also has a small amount of residential development. Unit 21 contains three caves: Hornet's Last Laugh Pit, Kick Start Cave, and Springtail Crevice. All are currently occupied by *R. exilis,* but they were not known to be occupied at the time of listing. Parts of the unit contain all the PCEs for the species.

The unit requires special management because of residential development, roadways, and potential for new construction in the unit. Threats include the potential for destruction of habitat from vandalism, operation of a quarry, and potential future development, contamination of the subsurface drainage area of the unit, altered karst features from stormwater retention, reduced nutrient input, and infestation of fire ants.

Unit 21 was delineated by drawing a radius of 0.3 mi (0.5 km) around each of the three caves and joining the edges of the three overlapping circles. The entire unit is Karst Zone 1. One of three caves (Springtail Crevice) is located in the pool area of a flood control reservoir, and its surface drainage basin covers the entire watershed of Mud Creek upstream of the cave, which includes 5,675 ac (2,297 ha) of land and extends about 4.3 mi (6.9 km) upstream. We included a portion of the watershed beyond the normal 0.3 mi (0.5 mi) distance used to delineate units, in order to include stream drainage that could provide the moisture necessary to provide humidity to the cave and its connected mesocaverns, but we did not include the entire surface drainage area for the unit, as it is so large and extends so far from the cave and its mesocaverns. The extra area included extends in contiguous Karst Zone 1 up the drainage basin about 0.5 mi (0.8 km) outside of the 0.3 mi (0.5 km) distance and adds approximately 68 ac (28 ha) to the area of the unit. The proposed unit designation includes about seven percent of the entire surface watershed.

*Unit 22*

In Unit 22, we are proposing 178 ac (72 ha) of private and City of San Antonio's Woodland Hills land located in northwestern Bexar County, northeast of Babcock Road and northwest of Heuermann Road in the UTSA KFR for the Madla Cave meshweaver. The unit is mostly vegetated, but contains a few residential sites on its extreme western border. There are several unpaved roads and trails, including one within the cave cricket foraging area. The unit is mostly undeveloped woodland, but some areas appear to have been cleared in the past for ranching. Unit 22 is a combination of private land and the City of San Antonio's Woodland Hills' property, which includes Breathless Cave, the only cave in this unit. Breathless Cave is currently occupied by Madla Cave meshweaver, but it was not known to be occupied at the time of listing. The unit contains all the PCEs for the species.

The unit requires special management because of the presence of residential development and potential future development within the unit. Threats include the potential for destruction of habitat from new development and vandalism, contamination of the subsurface drainage area of the unit from future development, reduction of moisture and nutrient input, and infestation of fire ants.

The unit was delineated by drawing a circle with a radius of 0.3 mi (0.5 km) around Breathless Cave. The resulting unit is mostly Karst Zone 1, except for a small sliver of Karst Zone 3 in the southwestern corner, which was included because of its narrow width and the increased edge effect. Adverse effects of edges include increased abundance of invasive plant and animal species. For a detailed description, refer to the sections on Edge Effects, *Special Management Considerations or Protection,* and *Criteria Used To Identify Critical Habitat.*

*Unit 23*

In Unit 23, we are proposing 178 ac (72 ha) of private land and City of San Antonio's Crownridge Canyon Natural Area in northwestern Bexar County northeast of Luskey road and east of the end of Fiesta Grande in the UTSA KFR for *R. infernalis.* A large portion of the unit is the City of San Antonio's Crownridge Canyon Natural Area, which is open to hiking, nature study,

and wildlife observation. Most of Unit 23 is in native woodland vegetation. The western and southwestern portion of the unit has been cleared for a residential subdivision. The clearing extends more than half way into the western portion of the Crownridge Canyon Cave's cave cricket foraging area. The Crownridge Canyon Cave is the only cave in this unit and it is occupied by *R. infernalis.* The cave was not known to be occupied at the time of listing, but part of the unit contains all the PCEs for the species.

The unit requires special management because of residential development, roadways, and potential for new construction in the unit. Threats include the potential for destruction of habitat from vandalism and future development, contamination of the subsurface drainage area of the unit, drying of karst features from impervious cover and diversion of storm water, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave. The unit is all Karst Zone 1.

*Unit 24*

In Unit 24, we are proposing 11 ac (4.5 ha) of private land in north-central Bexar County, but south of Vera Cruz Road in the Stone Oak KFR for *R. exilis.* The unit is composed of undisturbed, native vegetation along the western edge of Camp Bullis, which contains the Peace Pipe Cave occupied by *R. exilis.* The cave was not known to be occupied at the time of listing, but the unit contains all the PCEs for the species.

The unit requires special management because of the potential for future development. Threats include destruction of habitat from vandalism and potential future development, contamination of the subsurface drainage area of the unit, drying of karst features, reduced nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the cave and including all Karst Zone 2 outside of Camp Bullis in the resulting circle. Camp Bullis was exempted according to section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) (*see* Exemptions section, below). The habitat was classified as Karst Zone 2 by Veni (2003, pp. 10–18) because the Peace Pipe Cave was not discovered until 2009. At that time, the cave was verified by a species expert to contain *R. exilis.* An area that was Karst Zone 3 was removed from the northern portion of the circle outside Camp Bullis because it did not meet the criteria for delineating critical habitat. The rest of Unit 24 is Karst Zone 2.

*Unit 25*

In Unit 25, we are proposing 177 ac (72 ha) of private land located in northern part of the City of San Antonio near the intersection of Shook Avenue and East Kings Highway in the Alamo Heights KFR for the Robber Baron Cave meshweaver. This unit contains cave OB3, occupied by the Robber Baron Cave meshweaver. The cave feature was discovered during excavation in 2009, after the Robber Baron Cave meshweaver had already been listed, so it is unknown whether the cave was occupied at the time of listing. The surface habitat around this feature has been highly modified and is covered with residential and commercial development, including numerous streets. Unit 25 also contains landscaped lawns, sports fields, and residential and commercial development. The unit contains only the PCE of karst-forming rock containing subterranean spaces.

The unit requires special management because of the high levels of residential and commercial development within the unit. Threats include the potential for destruction of habitat from vandalism and potential new development, contamination of the subsurface drainage area of the unit, drying of the karst feature, reduction of nutrient input, and infestation of fire ants.

The unit was delineated by drawing a radius of 0.3 mi (0.5 km) around the feature. Because no listed species were known from this area of the Alamo Heights KFR when Karst Zones were delineated by Veni (2003), the entire unit is located in Karst Zone 2.

*Unit 26*

In Unit 26, we are proposing 117 ac (47 ha) of private land in western Bexar County southwest of the extension of Stevens Ranch Parkway and south of Unit 14 in the Culebra Anticline KFR for *R. infernalis.* This unit is all undeveloped land. Woody vegetation has been thinned for ranching in the eastern portion of the unit, while the western portion has been more heavily cleared. There is one cave in this unit, Max and Roberts Cave, and it currently contains *R. infernalis.* It is unknown if the cave was occupied at the time of listing. The cave has two entrances, and this unit contains all the PCEs necessary for the conservation of the species.

The unit requires special management because of potential future residential and commercial development and trespassing. Threats include the potential for destruction of surface vegetation and karst habitat from vandalism, contamination of the subsurface drainage area of the unit, drying of karst habitat, reduction of nutrient input, and infestation of fire ants.

This unit was delineated by drawing a radius of 0.3 mi (0.5 km) around each of the two cave entrances and connecting the edges of the overlapping circles. Unit 26 is primarily Karst Zone 1, but the cave cricket foraging and protection area on the western part of the unit was included even though it is Karst Zone 3.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the Fifth and Ninth Circuits Court of Appeals have invalidated our definition of "destruction or adverse modification" (50 CFR 402.02) (*see Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a

Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded or authorized, do not require section 7 consultation.

As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "Reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect any of the nine Bexar County invertebrates or their designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not Federally funded, authorized, or permitted, do not require section 7 consultations.

*Application of the "Adverse Modification" Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for any of the nine Bexar County invertebrates. As discussed above, the role of critical habitat is to support the life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for any of the nine Bexar County invertebrates include, but are not limited to:

(1) Actions that would result in removing, thinning, or destroying perennial surface vegetation. Such activities could include, but are not limited to, burning, wood cutting or other mechanical removal, grading, excessive livestock overgrazing, construction, road building, mining, and herbicide application. These activities could destroy or damage the native plant community and increase the number of nonnative plants and animals, including fire ants. The actions could also adversely affect cave crickets and other native animals on the surface that provide nutrients to the karst ecosystem, reduce other nutrient input (for example, leaf litter and roots), reduce water quality, reduce humidity of the cave, and change subterranean temperatures.

(2) Actions that would alter the surface topography or subsurface geology resulting in a disruption of ecosystem processes necessary to sustain the cave environment. Such activities could include, but are not limited to, filling cave entrances or otherwise reducing airflow in a way that limits oxygen availability; modifying cave entrances or creating new entrances that increase airflow in a way that results in drying of the karst features; altering natural drainage patterns, surface or subsurface, in a manner that alters the amount or quality or both of water entering the cave, karst feature, or mesocaverns; removing or disturbing native surface vegetation so that it alters the quality or quantity of water entering the karst environment; disturbing soil in such a way that it results in increased sedimentation in the karst environment or increased numbers of fire ants; increasing impervious cover that may decrease water quantity entering the karst environment or affect the temperature of karst below it or both within any critical habitat unit, such as paving over a vegetated area; and altering the entrance or opening of a cave or karst feature in a way that would disrupt movements of cave crickets or other animals that provide nutrient input or otherwise negatively altering the movement of nutrients into the cave or karst feature.

(3) Actions that would introduce pollutants to the occupied features themselves, the surface and subsurface drainage basins, or the surrounding mesocaverns. Such activities could include, but are not limited to, discharge or dumping of chemicals, silt, pollutants, household or industrial waste, pesticides or herbicides, or other harmful material into or near critical habitat units that may affect surface plant and animal communities or that

may affect the subsurface karst ecosystem or degrade subsurface water quality.

(4) Activities within caves that would lead to soil compaction, changes in atmospheric conditions, or abandonment of the cave by bats or other fauna. Such activities could include, but are not limited to, excessive human traffic, destruction of cave features, enlargement of existing entrances, or creation of new entrances to karst features.

(5) Activities that would attract or increase fire ants, cockroaches, or other invasive predators, competitors, parasites, or potential vectors for diseases into caves or karst features within the critical habitat units. Such activities could include, but are not limited to, dumping of garbage in or around caves or karst features.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the nine Bexar County invertebrates to determine if they are exempt under section 4(a)(3) of the Act.

Approved INRMPs

Camp Bullis Military Reservation

Camp Bullis Military Reservation (Camp Bullis) has an approved INRMP in place that provides benefits to *Rhadine exilis, R. infernalis,* and Madla Cave meshweaver. Camp Bullis is a 43.7 $mi^2$ (113.3 $km^2$) facility under the command of Fort Sam Houston, U.S. Army, Texas. The area contains 26 caves with 1 or more of the 3 listed species. After the species were petitioned for listing, Camp Bullis began karst investigations to determine the extent of these species on their property and how best to manage them. A management plan was developed in 1999 (Veni and Associates 1999) and revised in 2002 (Veni *et al.* 2002a and 2002b) to eliminate, mitigate, and prevent harm to these and other rare species on Camp Bullis in perpetuity. The Veni *et al.* 2002a and 2002b reports became part of an INRMP in 2005. The INRMP was revised in 2007 and underwent an annual review and update in 2010.

The INRMP provides for management of all caves occupied by *Rhadine exilis, R. infernalis,* and Madla Cave meshweaver. The Madla Cave meshweaver is only found in one cave within the interior of Camp Bullis. Management actions include protecting the cave footprint, surface and subsurface drainage areas associated with the occupied cave, cave cricket foraging area, and surface plant and animal community, and controlling fire ants. The plan includes in-cave biological surveys, cave gate construction, and preservation of karst management areas (KMAs) around cave entrances. The KMAs will be preserved in perpetuity within the limits possible through the authority of Camp Bullis and its operational and mission requirements. The INRMP stipulates that should Camp Bullis ever be transferred in whole or in part, local Army officials will request that the Secretary of the Army, or other appropriate authority, review and incorporate provisions from this management plan into the property disposal procedures. Those provisions would transfer responsibility for appropriate management of any former Camp Bullis karst management areas to all subsequent owners by deed recordation or other binding instrument.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Camp Bullis INRMP and that conservation efforts identified in the INRMP will provide a benefit to *R. exilis, R. infernalis,* and the Madla Cave meshweaver occurring in habitats within or adjacent to Camp Bullis. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 4,104 ac (1,660 ha) of habitat in this proposed revised critical habitat designation because of this exemption.

**Exclusions**

*Application of Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this

analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; and/or implementation of a management plan that provides equal to or more conservation that a critical habitat designation would provide.

The benefits of critical habitat include public awareness of the presence of these species and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for these species due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After evaluating the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will be evaluating whether certain lands in proposed critical habitat unit 1e, 3, 6, 8, and 17 are appropriate for exclusion from the final designation. If our analysis results in a determination that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then we will exclude the lands from the final designation.

After considering the following areas under section 4(b)(2) of the Act, we are proposing to exclude them from the critical habitat designation for *R. exilis. R. infernalis,* Helotes mold beetle, and Madla Cave meshweaver: Canyon Ranch Pit; Fat Man's Nightmare Cave; Scenic Overlook Cave and associated portions of Unit 1e; Helotes Blowhole, Helotes Hilltop Cave, and portions of Unit 3 associated with these caves; Madla's Cave and portions of Unit 17 associated with it; Hills and Dales Pit and portions of Unit 8 associated with it; and John Wagner Ranch Cave No. 3 and portions of Unit 6 associated with it.

We propose to exclude these areas because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, or

(2) They are appropriate for exclusion under the "other relevant factor" provisions of section 4(b)(2) of the Act.

However, we specifically solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we provide a detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

An economic analysis conducted on the previous critical habitat designation found that the invertebrate critical habitat area is characterized by intense commercial and residential development. It stated that potential costs arising from such development were captured through quantification of technical assistance efforts for landowners regarding smaller land use activities on private properties, development of HCPs, and individual construction projects that are foreseeable over a 10-year time horizon (*e.g.,* infrastructure development at University of Texas, San Antonio, and road expansion projects). The economic analysis further stated that the economic impacts of the proposed designation will be manifested primarily through project modification costs of development-related HCPs. It estimated that project modification costs represent approximately 84 percent of the total cost of the designation and will be borne by private landowners planning to engage in commercial or large-scale residential development on their properties. The analysis found that the most costly of these modifications is the purchasing of karst preserves. The analysis further stated that the majority of the costs that are attributable solely to designation of critical habitat are expected to arise from actions taken in accordance with new information and awareness that would result from the designation.

We will announce the availability of the draft economic analysis on this revised designation of critical habitat as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Austin Ecological Services Field Office directly (*see* **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. Lands owned by Camp Bullis were exempted from this proposed critical habitat rule on the basis of an existing INRMP. Therefore, we anticipate no impact to national security. There are no areas proposed for exclusion based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United

States with Tribal entities. We also consider any social impacts that might occur because of the designation.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

We will consider the La Cantera HCP and any other relevant information during the development of the final rule to determine if this area should be excluded from the final critical habitat designation under section 4(b)(2) of the Act.

The goals of the La Cantera HCP are to minimize and mitigate for the potential negative effects of constructing and operating commercial, light industrial, recreational, and residential development near and adjacent to currently occupied habitat of the endangered karst invertebrates, and to contribute to conservation of the covered species and other listed and non-listed cave or karst fauna.

The La Cantera HCP authorizes take of listed species in La Cantera Cave No. 1 and La Cantera Cave No. 2. Under the La Cantera HCP, mitigation for take within these caves was implemented by purchasing and managing eight caves known to contain one or more of the nine Bexar County invertebrates for which take was being permitted. These mitigation caves are Canyon Ranch Pit, Fat Man's Nightmare Cave, Scenic Overlook Cave and the surrounding approximately 75 ac (30 ha) within Unit 1e; Helotes Blowhole and Helotes Hilltop Caves and the surrounding approximately 25 ac (10 ha) within Unit 3; John Wagner Cave No. 3 and the surrounding approximately 4 ac (1.6 ha) within Unit 6; Hills and Dales Pit and the surrounding approximately 70 ac (28 ha) within Unit 8; and Madla's Cave and the surrounding approximately 5 ac (2 ha) within Unit 17. As part of their HCP, La Cantera is required to protect and manage these areas in perpetuity in accordance with the conservation needs of the species.

Table 5 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but are exempt from designation under section 4(a)(3) of the Act, and lands that the Service is considering for possible exclusion from the final critical habitat rule under section 4(b)(2) of the Act.

TABLE 5—EXEMPTIONS AND AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

| Unit | Specific area | Basis for exclusion/ exemption | Areas meeting the definition of critical habitat in acres (hectares) | Areas exempted or possible exclusion in acres (hectares) |
|---|---|---|---|---|
| 1e | La Cantera HCP | 4(b)(2) | 690 (279) | 75 (30) |
| 3 | La Cantera HCP | 4(b)(2) | 125 (51) | 25 (10) |
| 6 | La Cantera HCP | 4(b)(2) | 99 (40) | 4 (1.6) |
| 8 | La Cantera HCP | 4(b)(2) | 471 (191) | 70 (28) |
| 10 | Camp Bullis | 4(a)(3) | 3,143 (1,273) | 3,143 (1,273) |
| 11 | Camp Bullis | 4(a)(3) | 906 (367) | 906 (367) |
| 17 | La Cantera HCP | 4(b)(2) | 115 (47) | 5 (2) |
| 24 | Camp Bullis | 4(a)(3) | 55 (22) | 55 (22) |

A final determination on whether we should exclude any of these areas from critical habitat for any of the nine Bexar County invertebrates will be made when we publish the final rule designating critical habitat. We will take into account public comments and carefully weigh the benefits of exclusion versus inclusion of these areas. We may also consider areas not identified above for exclusion from the final critical habitat designation based on information we may receive during the preparation of the final rule (*e.g.,* management plans for additional areas).

**Peer Review**

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

**Required Determinations**

*Regulatory Planning and Review—Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

In the previous proposed rule, we certified that the proposed designation of critical habitat for the nine endangered Bexar County invertebrate species would not have a significant economic impact on a substantial number of small entities and that the proposed rule did not meet the criteria under SBREFA as a major rule. Therefore, an initial regulatory flexibility analysis was not required. In summary, we reasoned that probable future land uses in the areas proposed for designation were expected to have a Federal nexus or require section 7 consultation (for example, road and utility development projects, water crossings, *etc.*). These projects may require Federal permits. In these areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under the rule—would be limited to a subset of the area proposed. The most likely Federal involvement would be associated with activities involving the Department of Defense, Federal Highways Administration, Texas Department of Transportation, Environmental Protection Agency, U.S. Army Corps of Engineers, or the Federal Emergency Management Agency. This proposed revised rule may result in project modifications when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact because we expect that most proposed projects, with or without modification, can be implemented in such a way as to avoid adversely modifying critical habitat, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action.

The economic analysis of the previous critical habitat designation found that the invertebrate critical habitat area is characterized by intense commercial and residential development and that the economic impacts of the proposed designation would be manifested primarily through project modification costs of potentially eight development-related HCPs. The previous analysis estimated that project modification costs represent approximately 84 percent of the total cost of the designation and would be borne by private landowners planning to engage in commercial or large-scale residential development on their properties. The analysis further stated that the most costly of these modifications is the purchasing of karst preserves. At this time, only the La Cantera HCP covers take for any of the Bexar County invertebrates.

We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate

in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because critical habitat is already designated in most of the areas of Bexar County, and this proposed revision would not substantially change the impacts associated with the currently designated critical habitat. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

*Takings*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we will analyze the potential takings implications of designating new and revised critical habitat for the nine Bexar County invertebrates in a takings implications assessment. Following completion of the proposed rule, a draft Economic Analysis will be completed for the proposed designation. The draft Economic Analysis will provide the foundation for us to use in preparing a takings implications assessment.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Texas. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform*

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features within the designated areas to assist the public in understanding the habitat needs of the nine Bexar County invertebrates.

*Paperwork Reduction Act of 1995*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act", we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no Tribal lands that are essential for the conservation, of the nine Bexar County invertebrates. Therefore, we are not proposing designation of critical habitat for them on Tribal lands.

*Energy Supply, Distribution, or Use*

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect it to significantly affect energy supplies, distribution, or use. There are electric

power lines and natural gas pipelines adjacent to or within many of the proposed units. We do not believe they would be significantly affected because critical habitat is currently in place in most of the units, and this proposed revision would not substantially change that. We do not expect to significantly affect energy supplies, distribution, or use because the majority of the lands we are proposing as critical habitat occur on privately owned lands that are primarily developed for residential uses, and not energy production or distribution. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

**References Cited**

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this package are the staff members of the Austin Ecological Services Field Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entries for "Meshweaver, Government Canyon Bat Cave" and "Spider, Government Canyon Bat Cave" under ARACHNIDS in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| ARACHNIDS | | | | | | | |
| * | * | * | * | * | * | | * |
| Meshweaver, Government Canyon Bat Cave. | *Cicurina vespera* | U.S.A. (TX) | NA | E | 706 | 17.95(g) | NA |
| * | * | * | * | * | * | | * |
| *Spider, Government Canyon Bat Cave.* | *Neoleptoneta microps* | *U.S.A. (TX)* | *NA* | *E* | *706* | *17.95(g)* | *NA* |
| * | * | * | * | * | * | | * |

3. Amend § 17.95 by:

a. In paragraph (g), revising the critical habitat entry for the Cokendolpher Cave Harvestman (*Texella cokendolpheri*);

b. In paragraph (g), revising the critical habitat entry for the Braken Bat Cave Meshweaver (*Cicurina venii*);

c. In paragraph (g), adding a critical habitat entry for the Government Canyon Bat Cave Meshweaver (*Cicurina vespera*) in the same alphabetical order in which the species appears in § 17.11(h);

d. In paragraph (g), revising the critical habitat entry for the Madla Cave Meshweaver (*Cicurina madla*);

e. In paragraph (g), revising the critical habitat entry for the Robber Baron Cave Meshweaver (*Cicurina baronia*);

f. In paragraph (g), adding a critical habitat entry for the Government Canyon Bat Cave Spider (*Neoleptoneta microps*) in the same alphabetical order in which the species appears in § 17.11(h);

g. In paragraph (i), revising the critical habitat entry for the Helotes Mold Beetle (*Batrisodes venyivi*);

h. In paragraph (i), revising the critical habitat entry for the Beetle (no common name) (*Rhadine exilis*); and

i. In paragraph (i), revising the critical habitat entry for the Beetle (no common name) (*Rhadine infernalis*), to read as follows.

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(g) *Arachnids.*

**Cokendolpher Cave Harvestman (*Texella cokendolpheri*)**

(1) Critical habitat for the Cokendolpher Cave harvestman in Bexar County, Texas, occurs in Unit 20 as described in this entry and depicted on Map 1 (index map) and Map 2 in this entry.

(2) The primary constituent elements of critical habitat for the Cokendolpher Cave harvestman are:

(i) Karst-forming rock containing subterranean spaces (caves and connected mesocaverns) with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks for foraging and sheltering);

(ii) Surface water free of pollutants that flows into the karst features. Sources may include surface runoff that flows directly into the caves' entrances, or water that flows through associated features, such as sinkholes and fractures known to connect to the karst features, or water that flows through the connected subsurface drainage area, which consequently allows water to flow into caves and passages; and

(iii) A healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) living near the karst

feature that provides nutrient input and protects the karst ecosystem from adverse effects (for example, from nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

(3) Developed lands (residential or commercial) that do not contain the subsurface primary constituent element (*see* subparagraph (2)(i) of this entry) and that existed on the effective date of this rule are not considered to be critical habitat.

(4) Data layers defining this map unit were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(5) Index Map of Bexar County invertebrates critical habitat units, Bexar County, Texas, follows.

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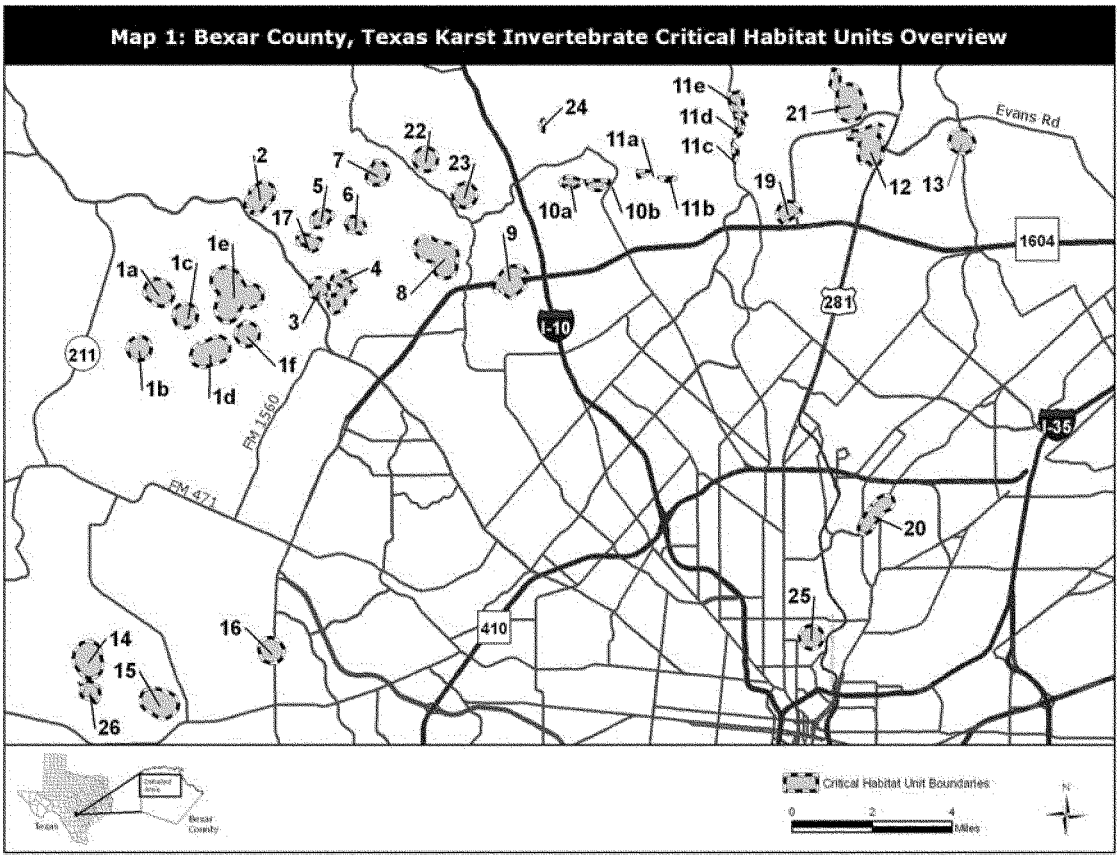
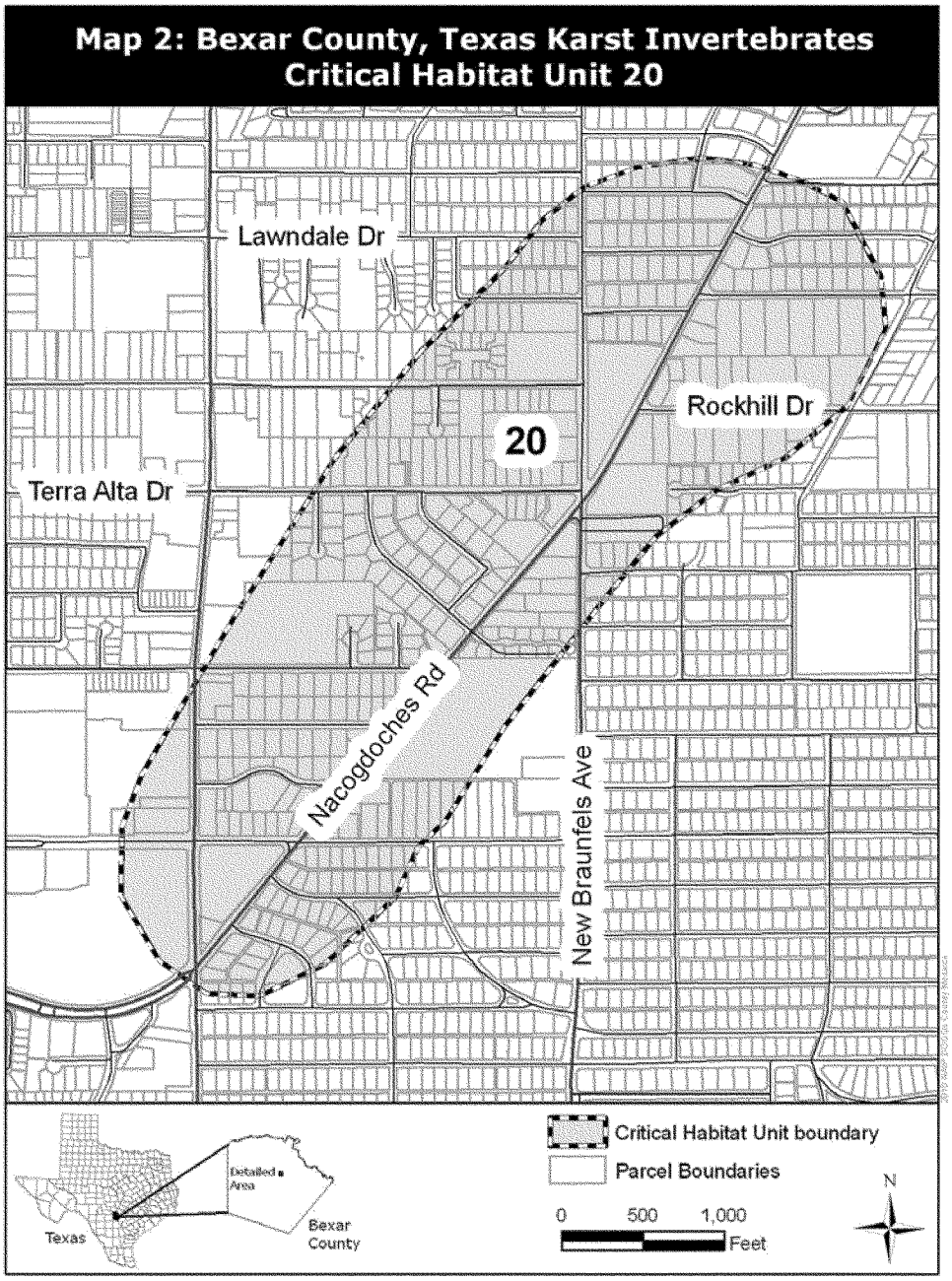



(6) Unit 20: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 2 of Unit 20 follows:




**Braken Bat Cave Meshweaver (*Cicurina venii*)**

(1) Critical habitat for the Braken Bat Cave meshweaver in Bexar County, Texas, occurs in Unit 15, as described in this entry and depicted on Map 3 in this entry. Unit 15 is also depicted on Map 1 (index map) provided at subparagraph (5) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

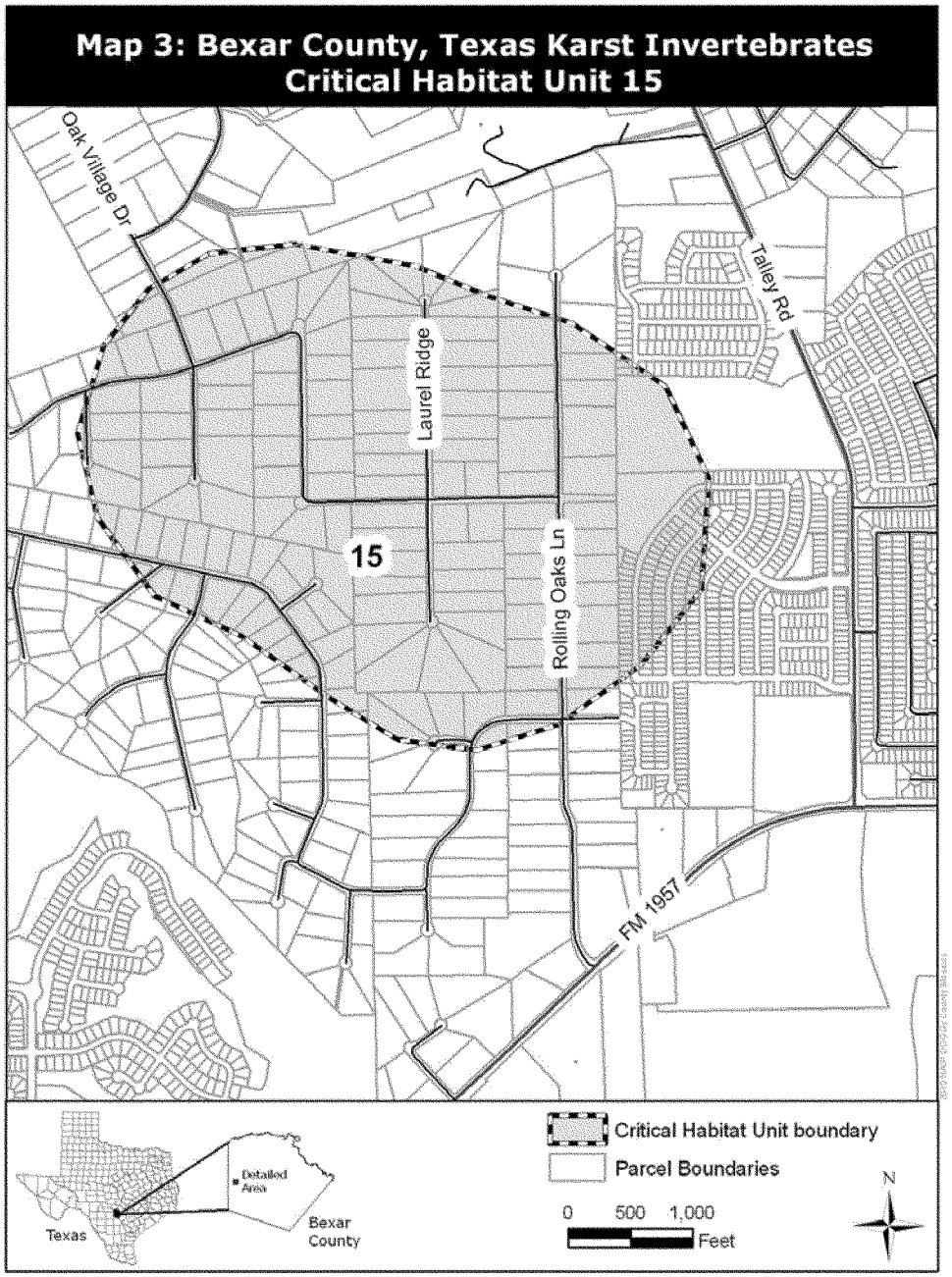
(2) The primary constituent elements of, and the statements regarding developed lands in, critical habitat for the Braken Bat Cave meshweaver are identical to those set forth at subparagraphs (2) and (3) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(3) Data layers defining this map unit were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(4) Unit 15: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 3 of Unit 15 follows:




**Government Canyon Bat Cave Meshweaver (*Cicurina vespera*)**

(1) Critical habitat for the Government Canyon Bat Cave meshweaver in Bexar County, Texas, occurs in Unit 1b, as described in this entry and depicted on Map 4 in this entry. Unit 1b is also depicted on Map 1 (index map) provided at subparagraph (5) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(2) The primary constituent elements of, and the statements regarding developed lands in, critical habitat for the Government Canyon Bat Cave meshweaver are identical to those set forth at subparagraphs (2) and (3) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(3) Data layers defining this map unit were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(4) Unit 1b: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 4 of Units 1a, 1b, 1c, 1d, 1e, and 1f follows:

* * * * *

**Madla Cave Meshweaver (*Cicurina madla*)**

(1) Critical habitat for the Madla Cave meshweaver in Bexar County, Texas, occurs in Units 1a, 1c, 1d, 1e, 2, 3, 5, 6, 8, 9, 17, and 22, as described in this entry and depicted on Maps 5, 6, 7, 8, 9, and 10 in this entry. Units 1a, 1c, 1d, and 1e are depicted on Map 4, which is provided at subparagraph (4)(ii) of the entry for the Government Canyon Bat Cave meshweaver in this paragraph (g). Units 1a, 1c, 1d, 1e, 2, 3, 5, 6, 7, 8, 9, 17, and 22 are also depicted on Map 1 (index map) provided at subparagraph (5) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(2) The primary constituent elements of, and the statements regarding developed lands in, critical habitat for the Madla Cave meshweaver are identical to those set forth at subparagraphs (2) and (3) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(3) Data layers defining this map unit were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(4) Unit 1a: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Unit 1a is depicted on Map 4, which is provided at subparagraph (4)(ii) of the entry for the Government Canyon Bat Cave meshweaver in this paragraph (g).

(5) Unit 1c: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Unit 1c is depicted on Map 4, which is provided at subparagraph (4)(ii) of the entry for the Government Canyon Bat Cave meshweaver in this paragraph (g).

(6) Unit 1d: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Unit 1d is depicted on Map 4, which is provided at subparagraph (4)(ii) of the entry for the Government Canyon Bat Cave meshweaver in this paragraph (g).

(7) Unit 1e: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Unit 1e is depicted on Map 4, which is provided at subparagraph (4)(ii) of the entry for the Government Canyon Bat Cave meshweaver in this paragraph (g).

(8) Unit 2: Bexar County, Texas.

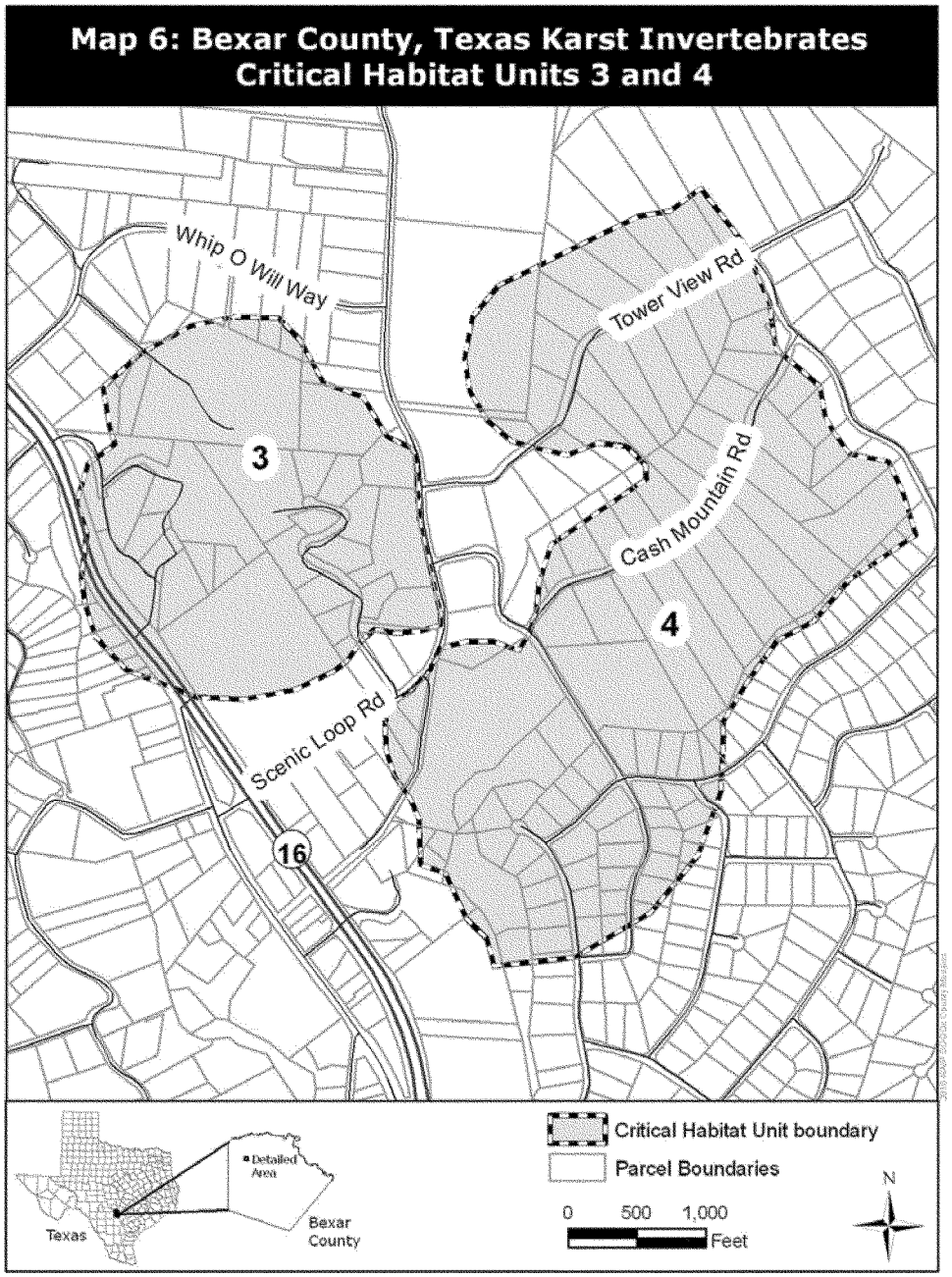
(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 5 of Unit 2 follows:

(9) Unit 3: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 6 of Units 3 and 4 follows:




(10) Unit 5: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 7 of Units 5, 6, and 17 follows:

(11) Unit 6: Bexar County, Texas.

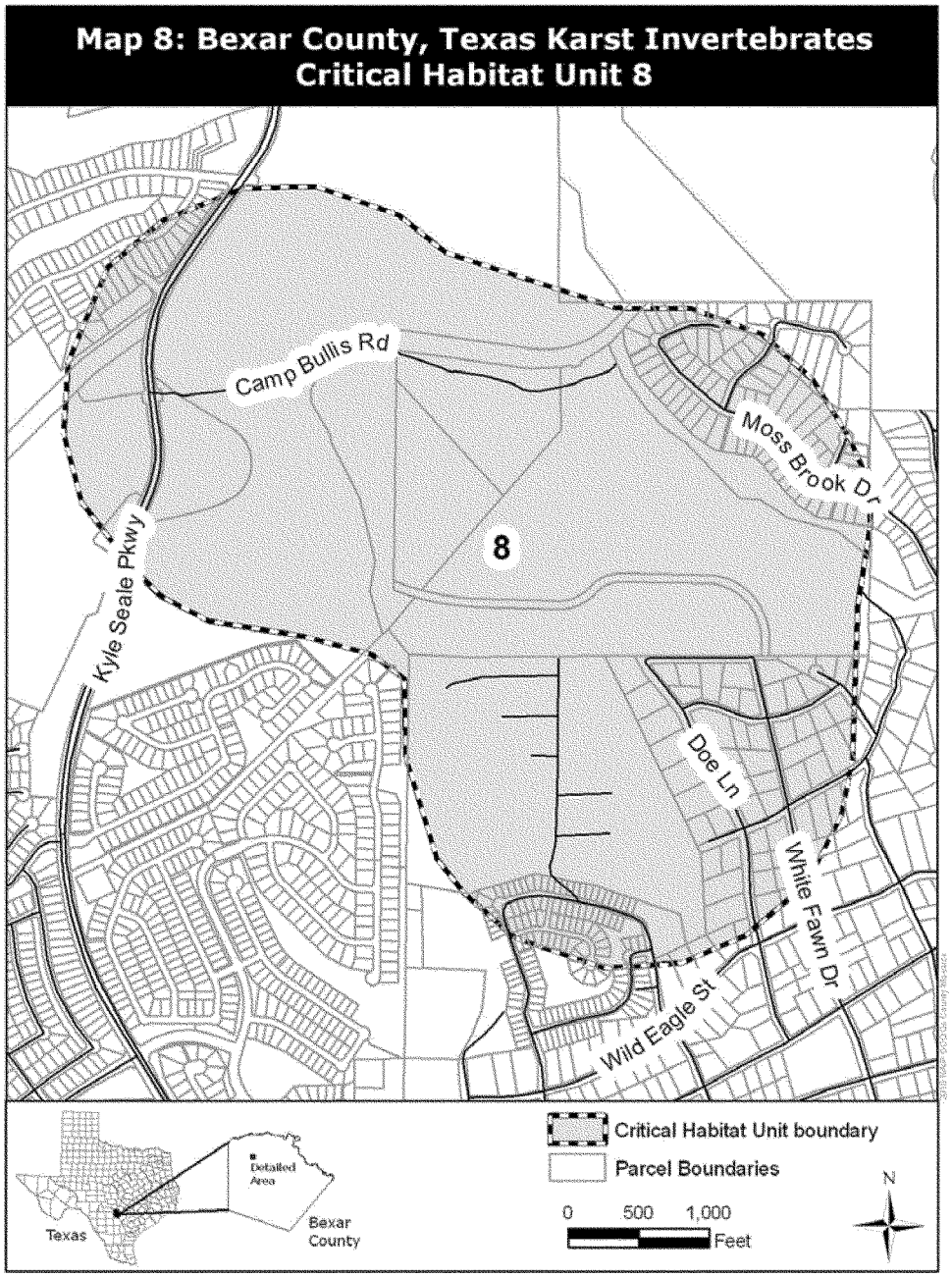
(i) [Reserved for textual description of unit.]

(ii) **Note:** Unit 6 is depicted on Map 7, which is provided at subparagraph (10)(ii) of this entry.

(12) Unit 8: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

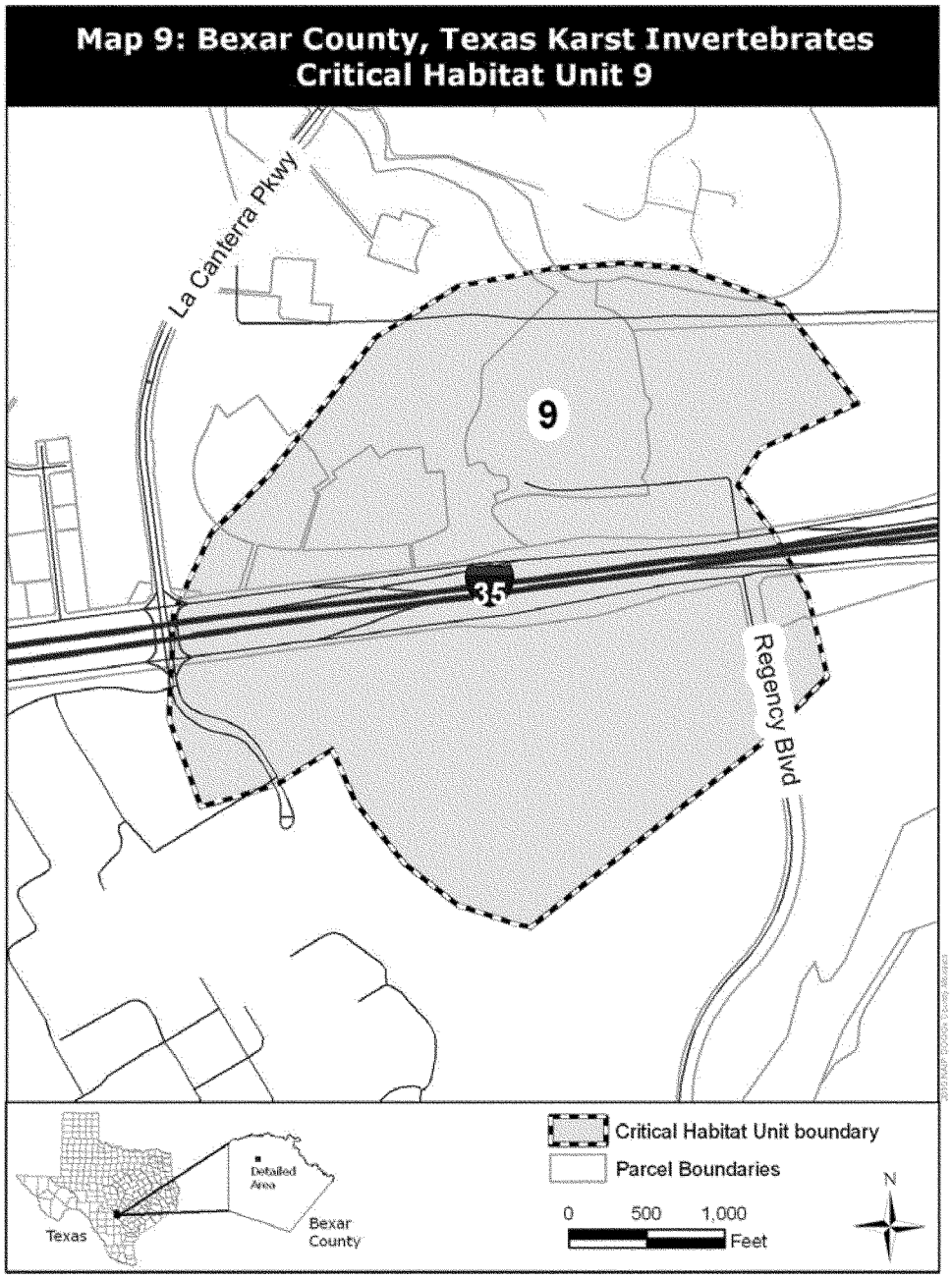
(ii) **Note:** Map 8 of Unit 8 follows:




(13) Unit 9: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 9 of Unit 9 follows:




(14) Unit 17: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Unit 17 is depicted on Map 7, which is provided at subparagraph (10)(ii) of this entry.

(15) Unit 22: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 10 of Unit 22 follows:

**Robber Baron Cave Meshweaver (*Cicurina baronia*)**

(1) Critical habitat for the Robber Baron Cave meshweaver in Bexar County, Texas, occurs in Units 20 and 25. Unit 20 is described as set forth, and depicted on Map 2 provided, at subparagraph (6) of the entry for the Cokendolpher Cave harvestman in this paragraph (g). Unit 25 is described in this entry and depicted on Map 11 in this entry. Units 20 and 25 are also depicted on Map 1 (index map) provided at subparagraph (5) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(2) The primary constituent elements of, and the statements regarding developed lands in, critical habitat for the Robber Baron Cave meshweaver are identical to those set forth at subparagraphs (2) and (3) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

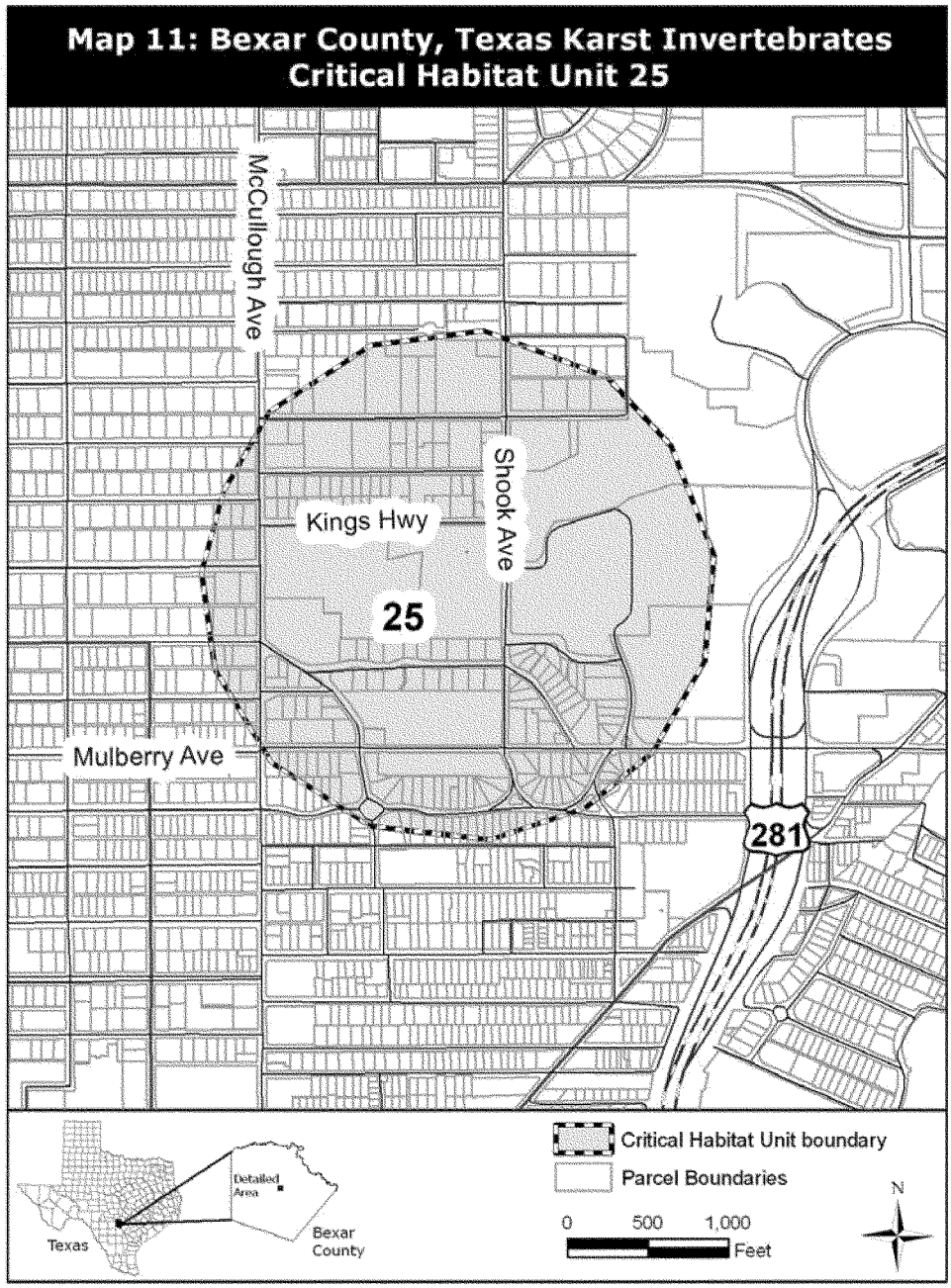
(3) Data layers defining this map unit were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(4) Unit 20: Bexar County, Texas. Unit 20 is described as set forth, and depicted on Map 2 provided, at subparagraph (6) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(5) Unit 25: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 11 of Unit 25 follows:




**Government Canyon Bat Cave Spider (*Neoleptoneta microps*)**

(1) Critical habitat for the Government Canyon Bat Cave spider in Bexar County, Texas, occurs in Unit 1b, as described and depicted on Map 4 at subparagraph (4) of the entry for the Government Canyon Bat Cave meshweaver in this paragraph (g). Unit 1b is also depicted on Map 1 (index map) provided at subparagraph (5) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(2) The primary constituent elements of, and statements regarding developed lands in, critical habitat for the Government Canyon Bat Cave spider are identical to those set forth at subparagraphs (2) and (3) of the entry for the Cokendolpher Cave harvestman in this paragraph (g).

(3) Data layers defining this map unit were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(4) Unit 1b: Bexar County, Texas. Unit 1b is described as set forth, and depicted on Map 4 provided, at subparagraph (4) of the entry for the Government Canyon Bat Cave meshweaver in this paragraph (g).

* * * * *

(i) *Insects.*

* * * * *

*Helotes Mold Beetle (Batrisodes venyivi)*

(1) Critical habitat for the Helotes mold beetle in Bexar County, Texas, which occurs in Units 1e, 3, and 5 as described in this entry and depicted on Maps 1 (index map), 2, 4, and 5 of this entry.

(2) The primary constituent elements of critical habitat for *Batrisodes venyivi* are:

(i) Karst-forming rock containing subterranean spaces (caves and connected mesocaverns) with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks for foraging and sheltering);

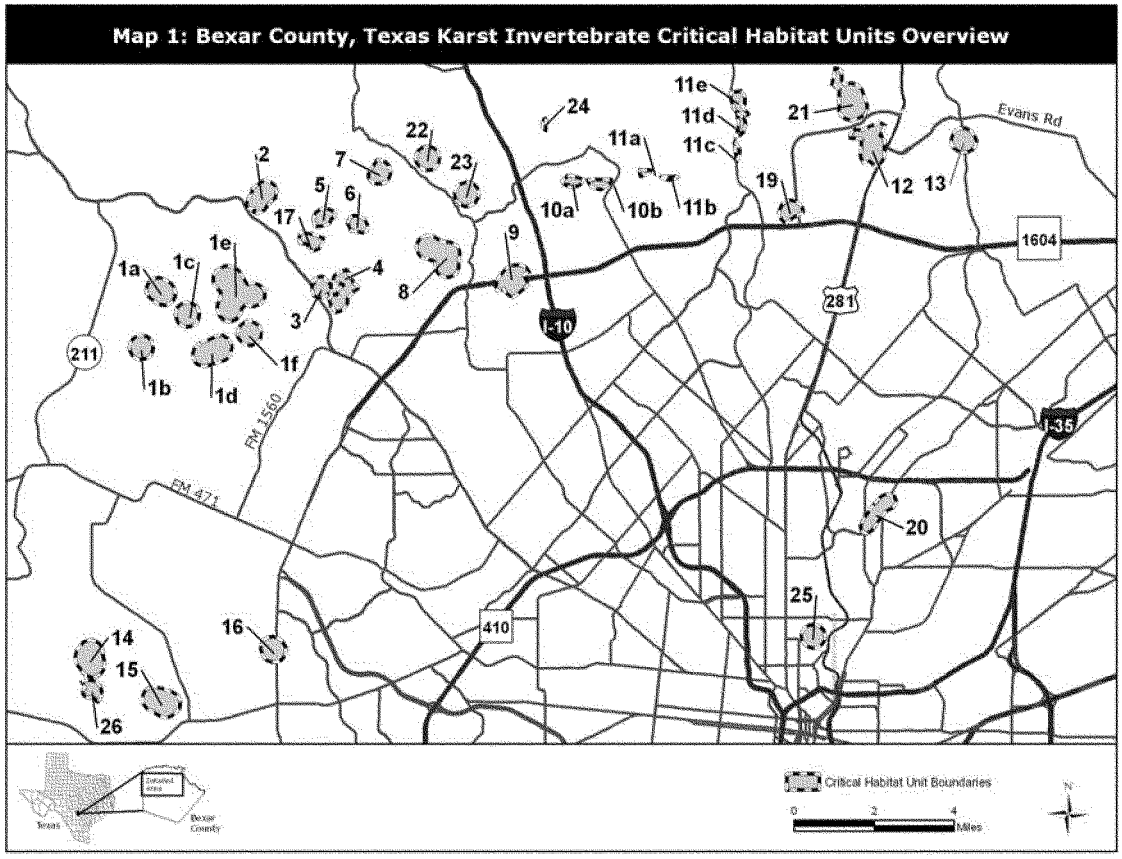
(ii) Surface water free of pollutants that flows into the karst features. Sources may include surface runoff that flows directly into the caves' entrances, or water that flows through associated features, such as sinkholes and fractures known to connect to the karst features, or water that flows through the connected subsurface drainage area, which consequently allows water to flow into caves and passages; and

(iii) A healthy surface community of native plants (for example, juniper-oak woodland) and animals (for example, cave crickets) living near the karst feature that provide nutrient input and protects the karst ecosystem from adverse effects (for example, from nonnative species invasions, contaminants, and fluctuations in temperature and humidity).

(3) Developed lands (residential or commercial) that do not contain the subsurface primary constituent element (*see* subparagraph (2)(i) of this entry) and that existed on the effective date of this rule are not considered to be critical habitat.

(4) Critical habitat map units. Data layers defining map units were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(5) Index Map of Bexar County invertebrates critical habitat units, Bexar County, Texas follows:




(6) Unit 1e: Bexar County, Texas.

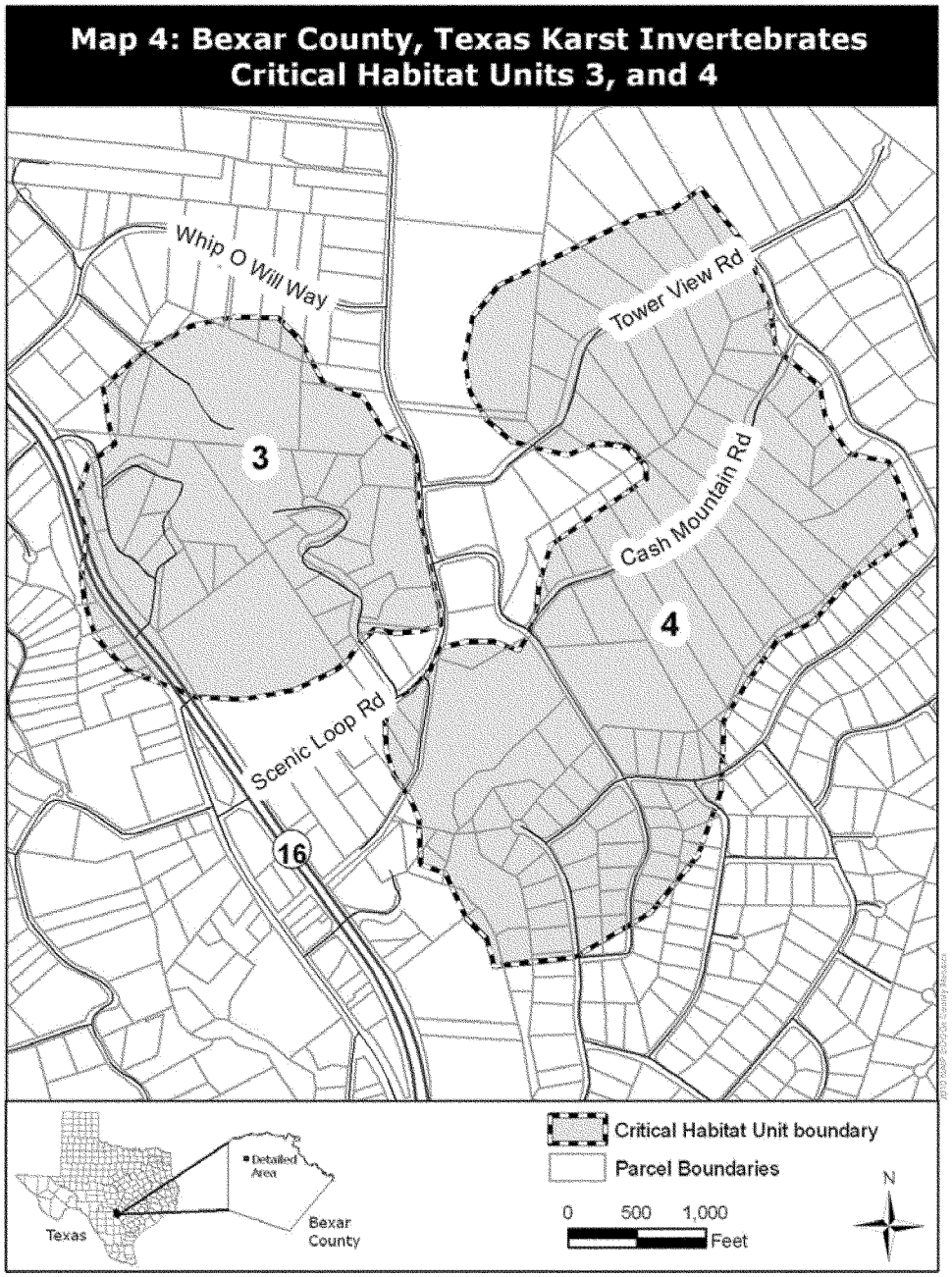
(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 2 of Units 1a, 1b, 1c, 1d, 1e, and 1f follows:

(7) Unit 3: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 4 of Units 3 and 4 follows:




(8) Unit 5: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 5 of Units 5, 6, and 17 follows:

**Beetle (No Common Name) (*Rhadine exilis*)**

(1) Critical habitat for the beetle (*Rhadine exilis*) in Bexar County, Texas, which occurs in Units 1b, 1d, 1e, 2, 3, 4, 5, 6, 7, 8, 9, 11a, 11b, 11c, 11d, 11e, 12, 13, 21, and 24, is depicted on Maps 3, 6, 7, 8, 10, 11, 12, 13, 19, and 22 in this entry, and on Maps 2, 4, and 5 provided at subparagraph (5) of the entry for the Helotes mold beetle in this paragraph (i). The Units are also depicted on Map 1 (index map) provided in subparagraph (5) of the entry for the Helotes mold beetle in this paragraph (i).

(2) The primary constituent elements of, and the statements regarding developed lands in, critical habitat for the *Rhadine exilis* are identical to those set forth at subparagraphs (2) and (3) of the entry for the Helotes mold beetle in this paragraph (i).

(3) Critical habitat map units. Data layers defining map units were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(4) Unit 1b: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 1a, 1b, 1c, 1d, 1e, and 1f are depicted on Map 2, which is provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(5) Unit 1d: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 1a, 1b, 1c, 1d, 1e, and 1f are depicted on Map 2, which is provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(6) Unit 1e: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 1a, 1b, 1c, 1d, 1e, and 1f are depicted on Map 2, which is

provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(7) Unit 2: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 3 of Unit 2 follows:

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(8) Unit 3: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 3 and 4 are depicted on Map 4, which is provided at subparagraph (7)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(9) Unit 4: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 3 and 4 are depicted on Map 4, which is provided at subparagraph (7)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(10) Unit 5: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 5, 6, and 17 are depicted on Map 5, which is provided at subparagraph (8)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(11) Unit 6: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 5 and 6 are depicted on Map 5, which is provided at subparagraph (8)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(12) Unit 7: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 6 of Unit 7 follows:

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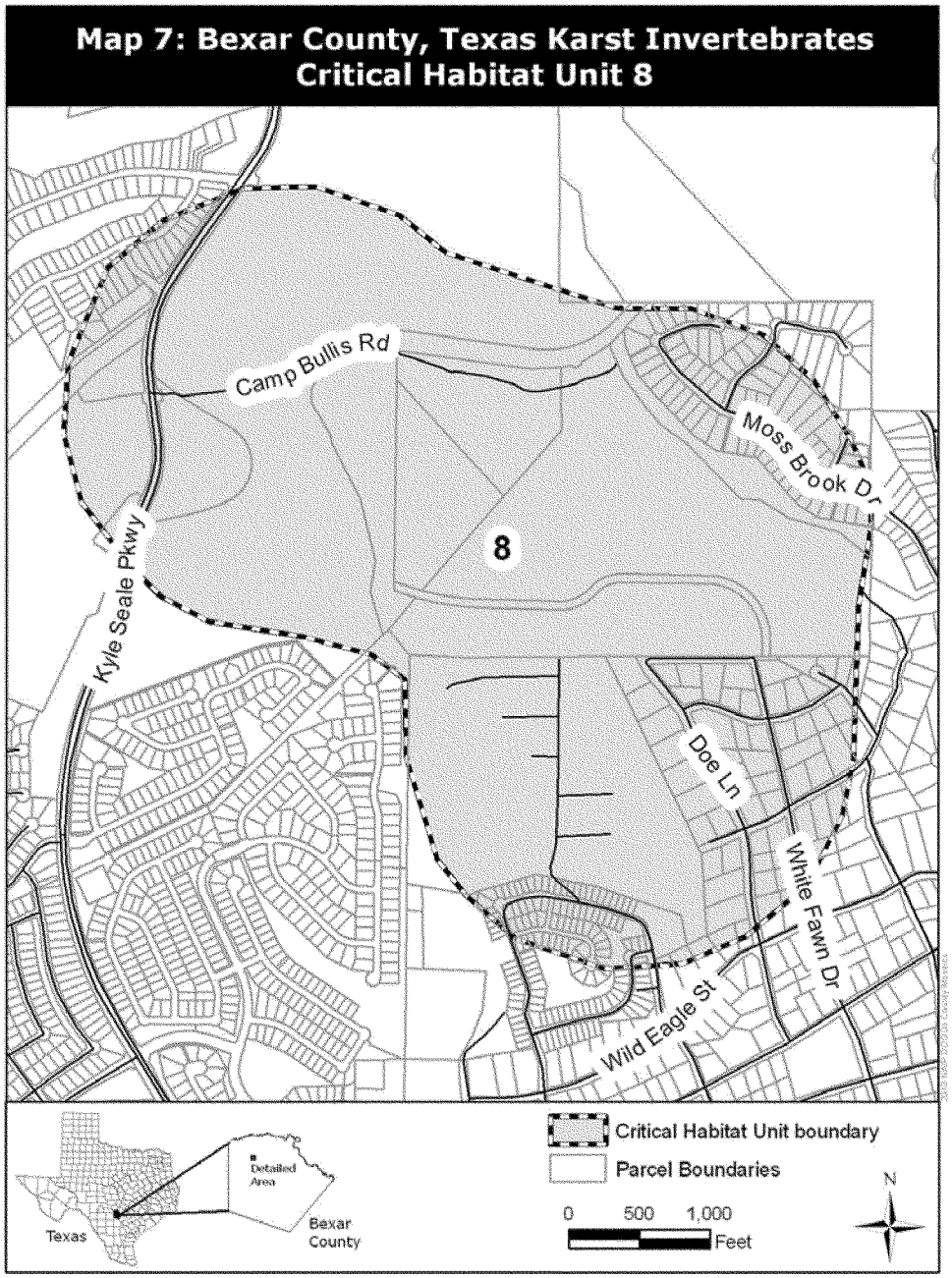
(13) Unit 8: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

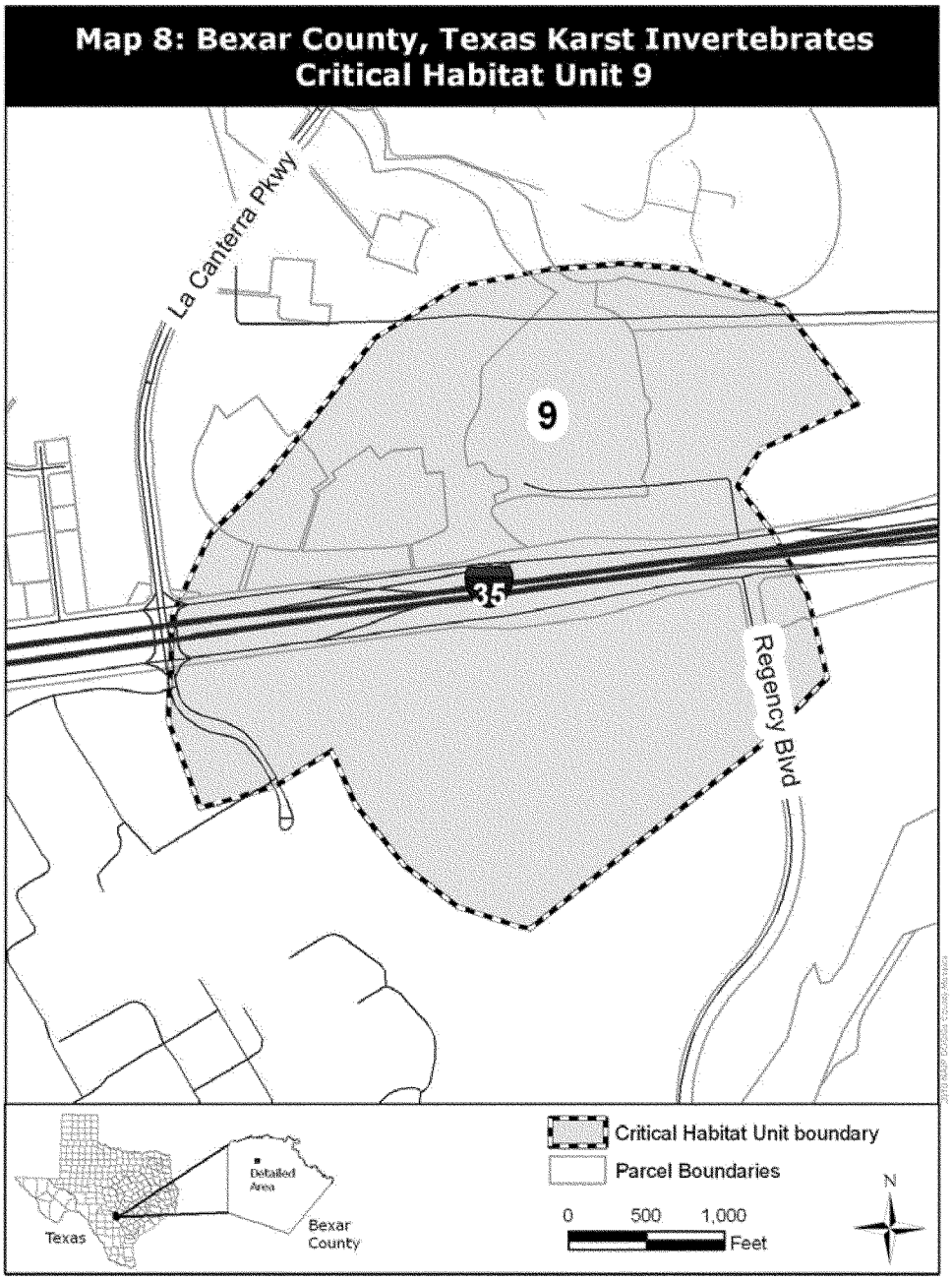
(ii) **Note:** Map 7 of Unit 8 follows:




(14) Unit 9: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

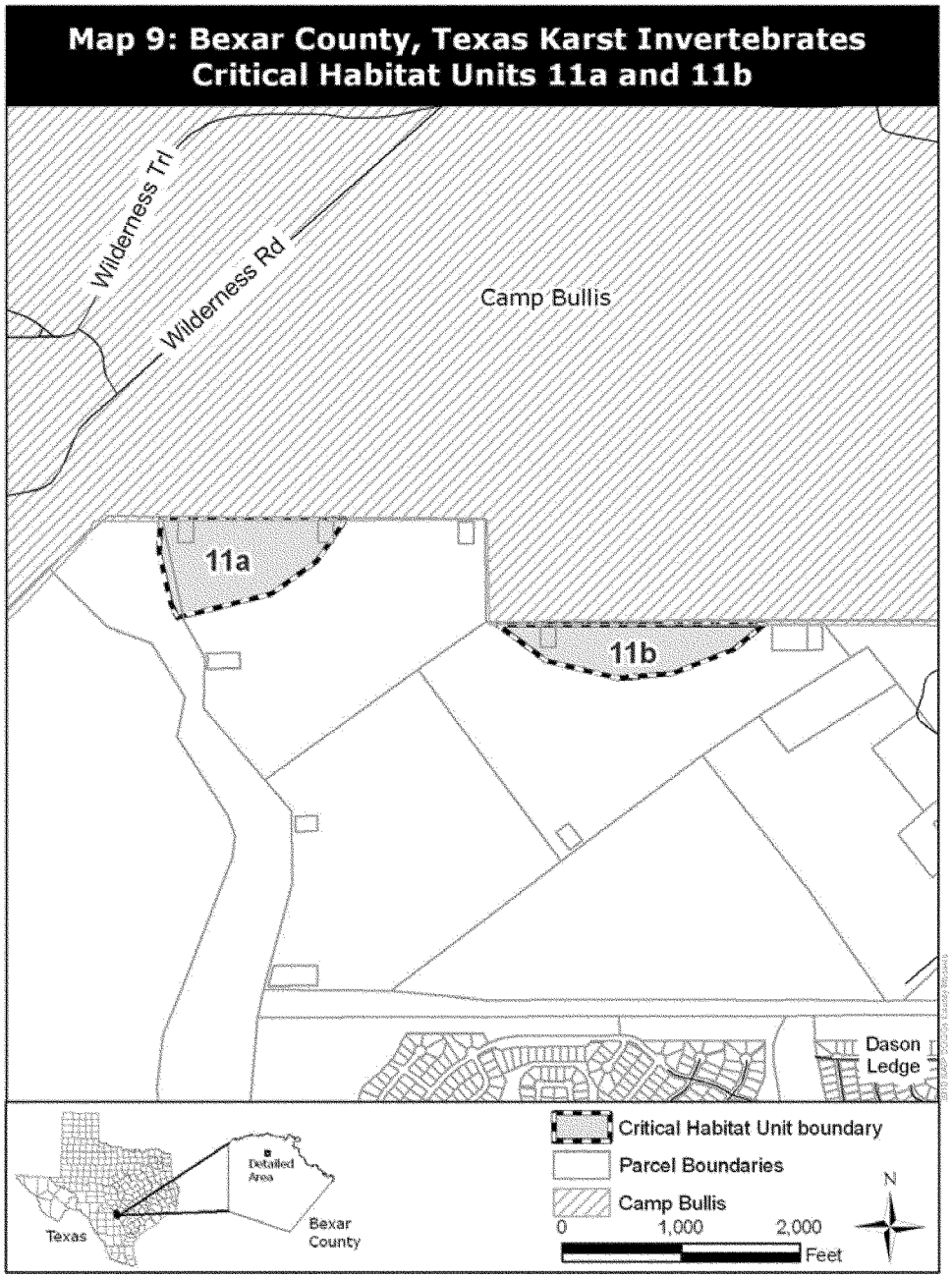
(ii) **Note:** Map 8 of Unit 9 follows:




(15) Unit 11a: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 9 of Units 11a and 11b follows:




(16) Unit 11b: Bexar County, Texas.

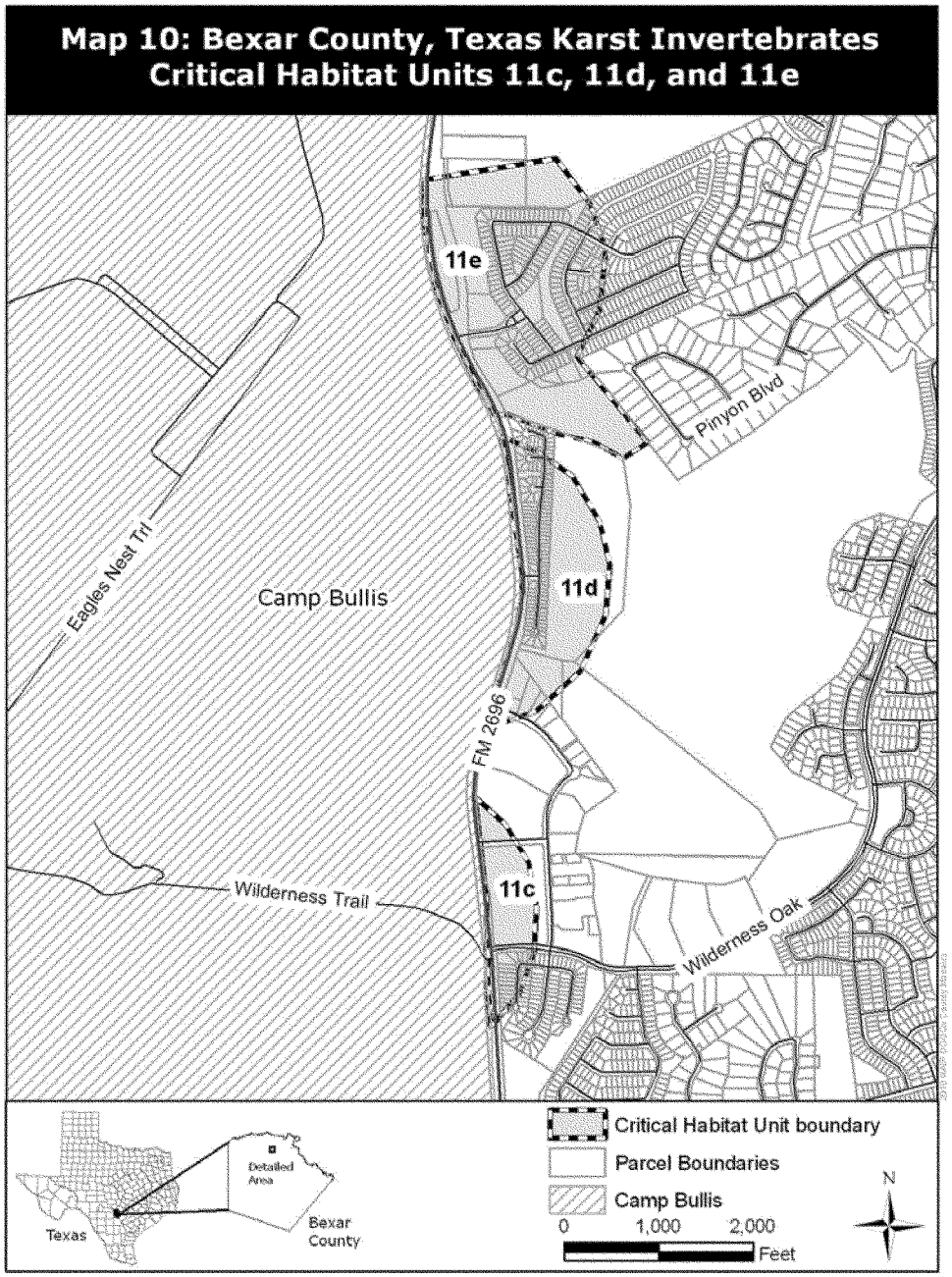
(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 11a and 11b are depicted on Map 9, which is provided at subparagraph (15)(ii) of this entry.

(17) Unit 11c: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 10 of Units 11c, 11d, and 11e follows:




(18) Unit 11d: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 11c, 11d, and 11e are depicted on Map 10, which is provided at subparagraph (17)(ii) of this entry.

(19) Unit 11e: Bexar County, Texas

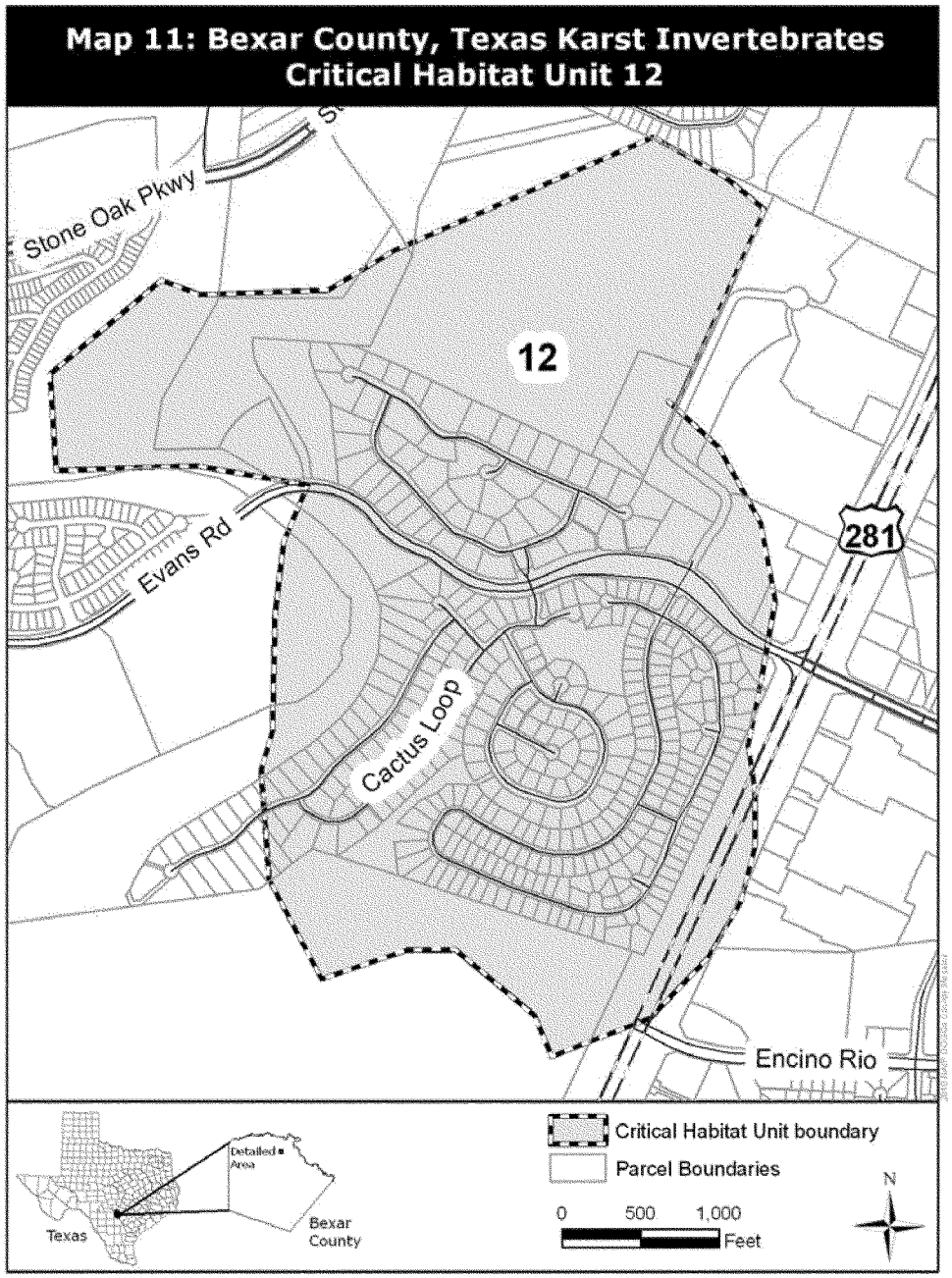
(i) [Reserved for textual description of unit.]

(ii) **Note:** Units 11c, 11d, and 11e are depicted on Map 10, which is provided at subparagraph (17)(ii) of this entry.

(20) Unit 12: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

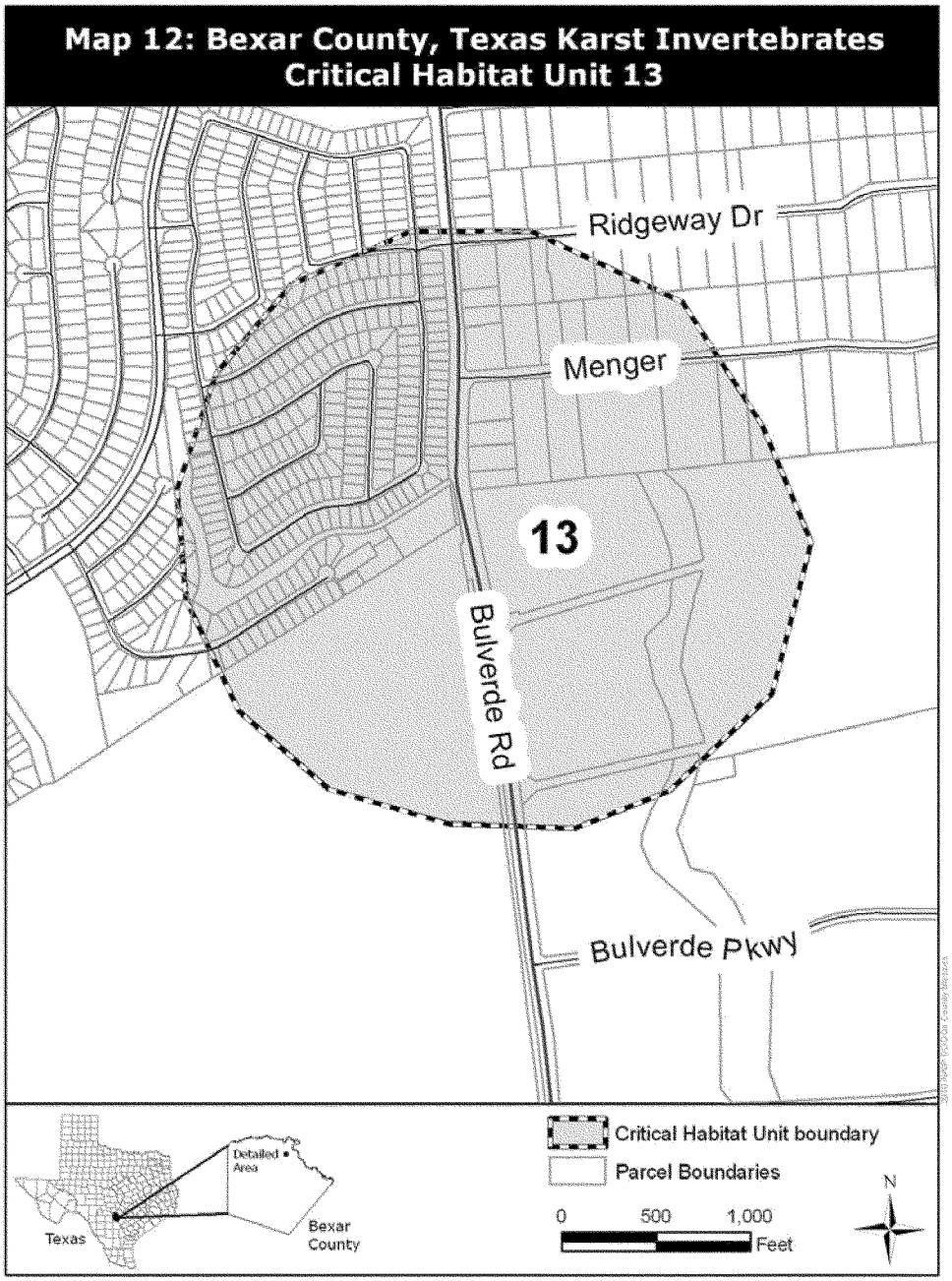
(ii) **Note:** Map 11 of Unit 12 follows:




(21) Unit 13: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

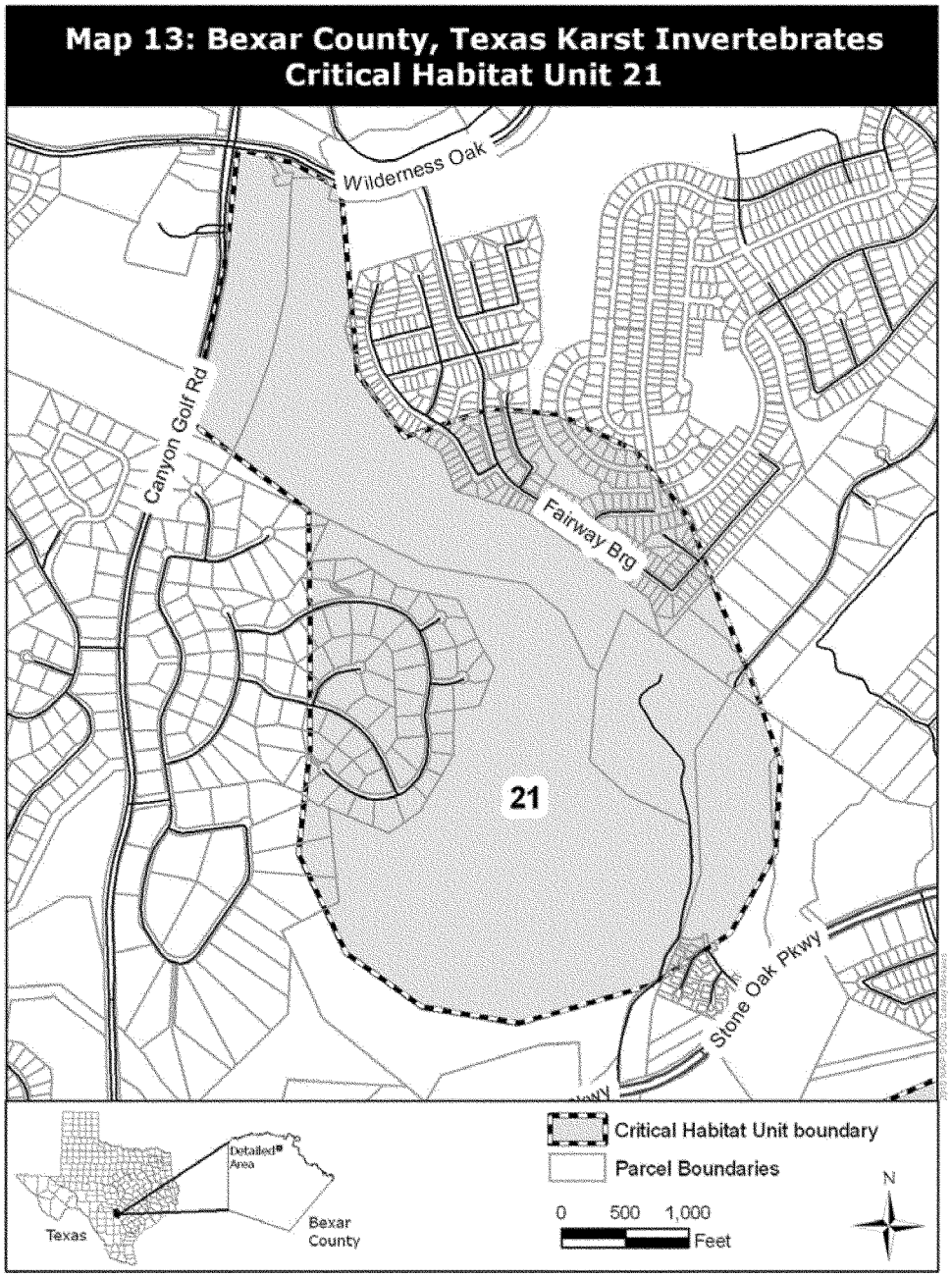
(ii) **Note:** Map 12 of Unit 13 follows:




(22) Unit 21: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

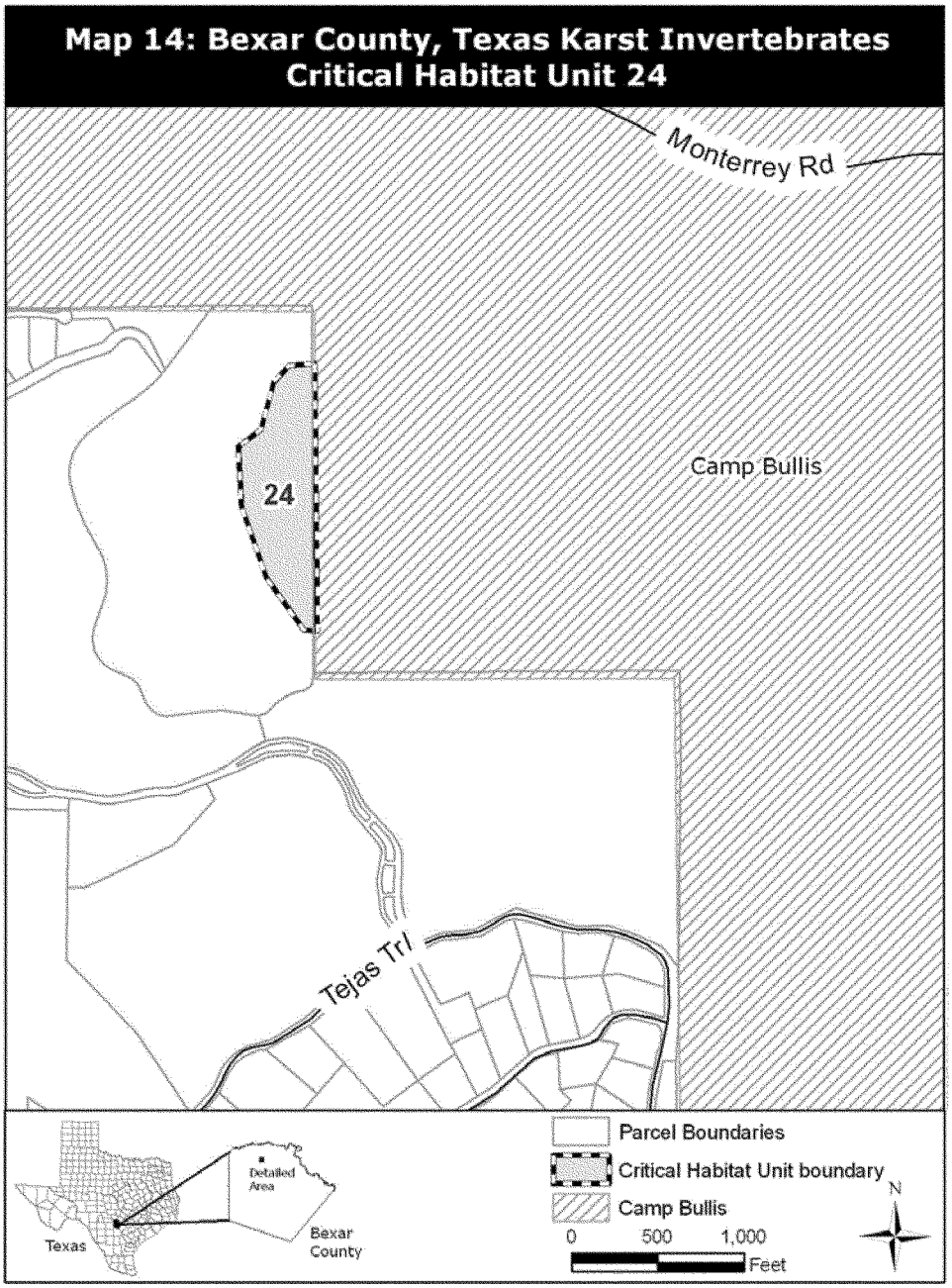
(ii) **Note:** Map 13 of Unit 21 follows:




(23) Unit 24: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 14 of Unit 24 follows:




**Beetle (No Common Name) (*Rhadine infernalis*)**

(1) Critical habitat for the beetle (*Rhadine infernalis*) in Bexar County, Texas, occurs in Units 1a, 1b, 1d, 1e, 1f, 2, 3, 4, 5, 6, 8, 10a, 10b, 14, 15, 16, 17, 19, 23, and 26. These units are depicted on Maps, 15, 16, 17, 18, 19, 20 and 21 in this entry; on Maps 2, 4, and 5 provided at subparagraphs (6), (7), and (8) of the entry for the Helotes mold beetle in this paragraph (i); and on Maps 3 and 7 provided at subparagraphs (7) and (13) of the entry for the beetle (*Rhadine exilis*) in this paragraph (i). The units are also depicted on Map 1 (index map) provided in subparagraph (5) of the entry for the Helotes mold beetle in paragraph (i).

(2) The primary constituent elements of, and statements regarding developed lands in critical habitat for *Rhadine infernalis* are identical to those set forth at subparagraphs (2) and (3) of the entry for the Helotes mold beetle in this paragraph (i).

(3) Critical habitat map units. Data layers defining map units were created using a geographic information system (GIS) which included cave locations, karst zone maps, roads, property boundaries, 2010 aerial photography, and USGS 7.5′ quadrangles. Points were placed on the GIS.

(4) Unit 1a: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 2 of Units 1a, 1b, 1c, 1d, 1e, and 1f is provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(5) Unit 1b: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 2 of Units 1a, 1b, 1c, 1d, 1e, and 1f is provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(6) Unit 1d: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 2 of Units 1a, 1b, 1c, 1d, 1e, and 1f is provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(7) Unit 1e: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 2 of Units 1a, 1b, 1c, 1d, 1e, and 1f is provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(8) Unit 1f: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 2 of Units 1a, 1b, 1c, 1d, 1e, and 1f is provided at subparagraph (6)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(9) Unit 2: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 3 of Unit 2 is provided at subparagraph (7)(ii) of the entry for the beetle (*Rhadine exilis*) in this paragraph (i).

(10) Unit 3: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 4 of Units 3 and 4 is provided at subparagraph (7)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(11) Unit 4: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 4 of Units 3 and 4 is provided at subparagraph (7)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(12) Unit 5: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 5 of Units 5, 6, and 17 is provided at subparagraph (8)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(13) Unit 6: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 5 of Units 5, 6, and 17 is provided at subparagraph (8)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(14) Unit 8: Bexar County, Texas.

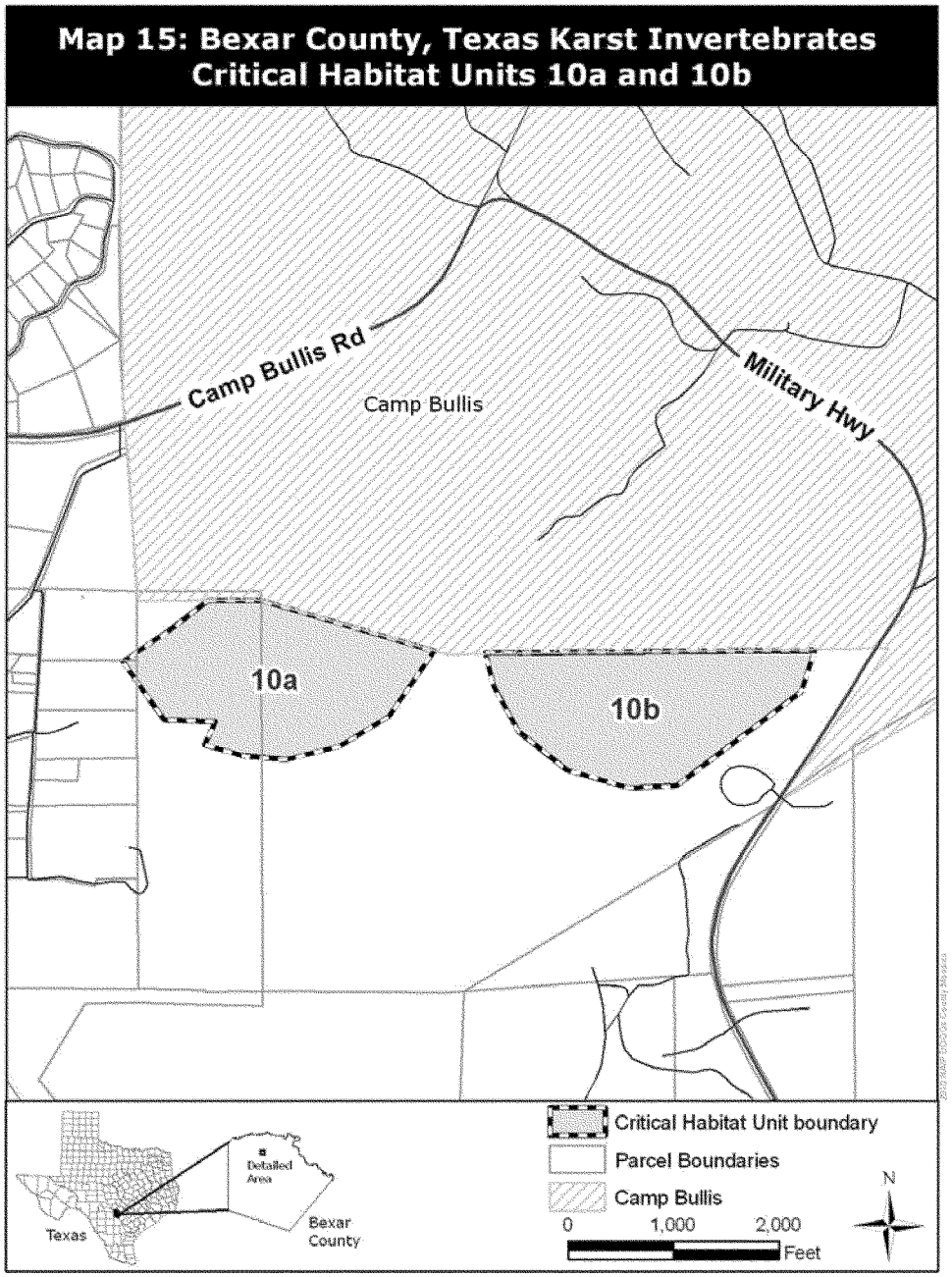
(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 7 of Unit 8 is provided at subparagraph (13)(ii) of the entry for the beetle (*Rhadine exilis*) in this paragraph (i).

(15) Unit 10a: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 15 of Units 10a and 10b follows:




(16) Unit 10b: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 15 of Units 10a and 10b is provided at subparagraph (15)(ii) of this entry.

(17) Unit 14: Bexar County, Texas.

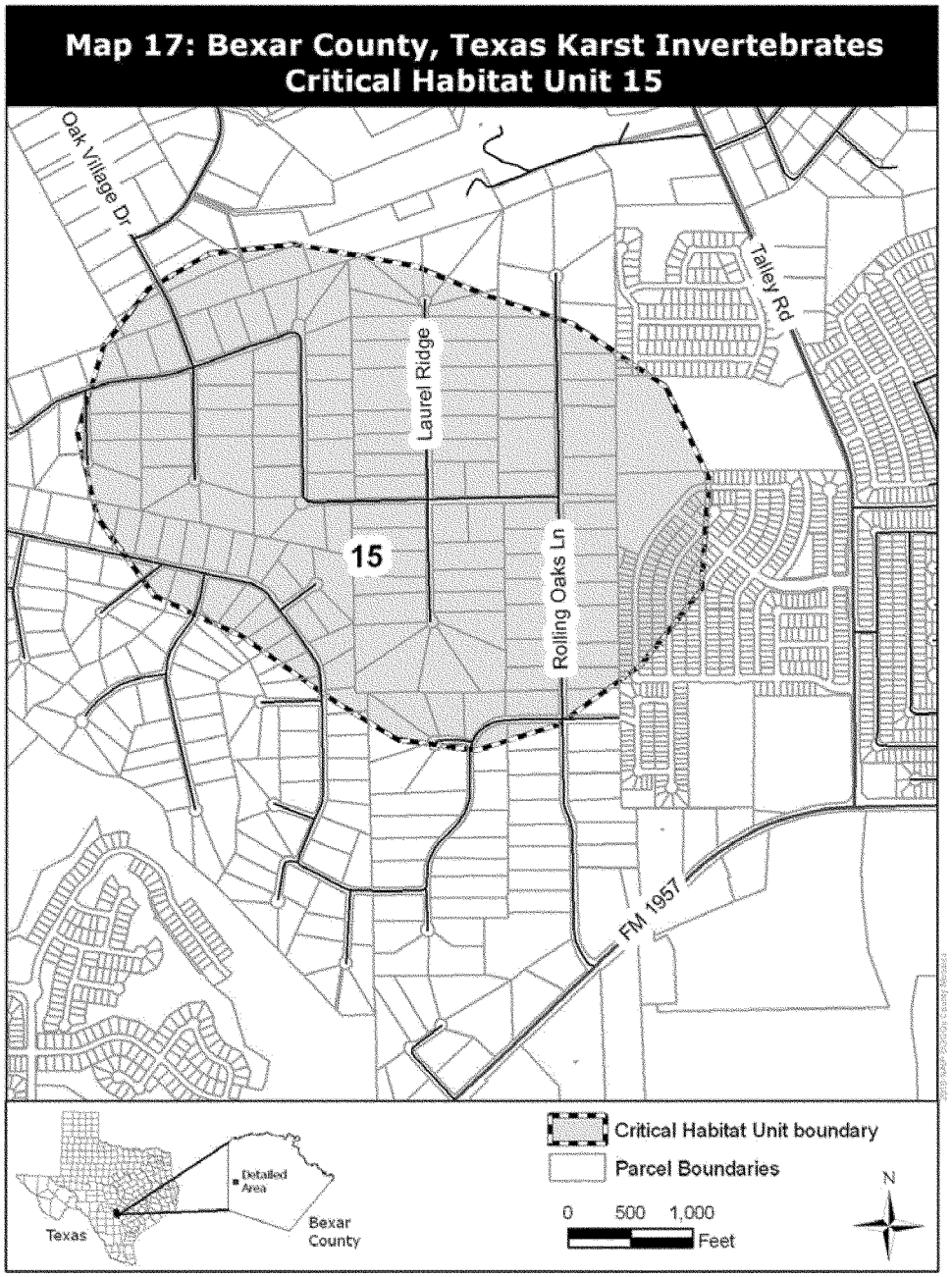
(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 16 of Unit 14 follows:

(18) Unit 15: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

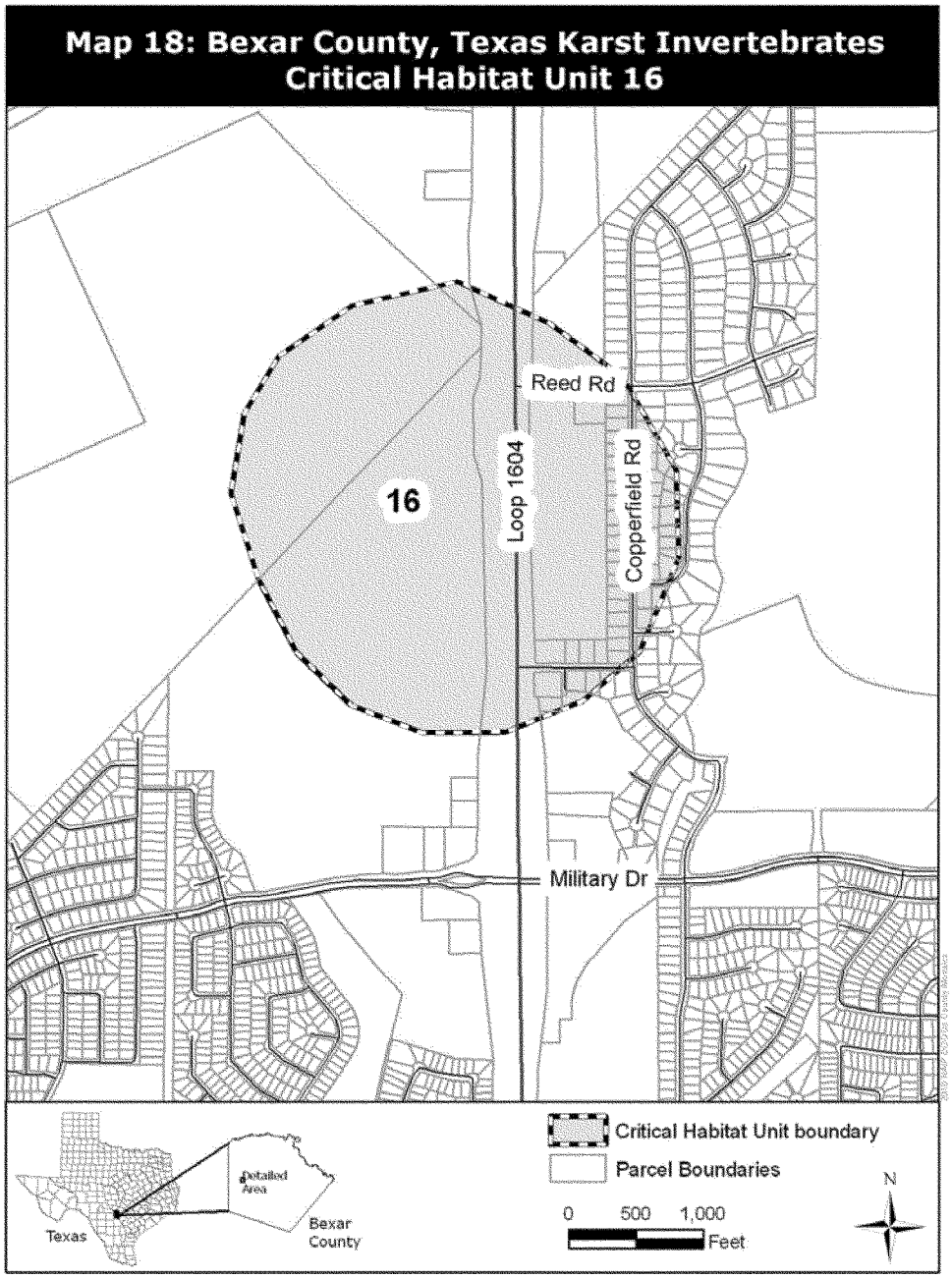
(ii) **Note:** Map 17 of Unit 15 follows:




(19) Unit 16: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 18 of Unit 16 follows:




(20) Unit 17: Bexar County, Texas.

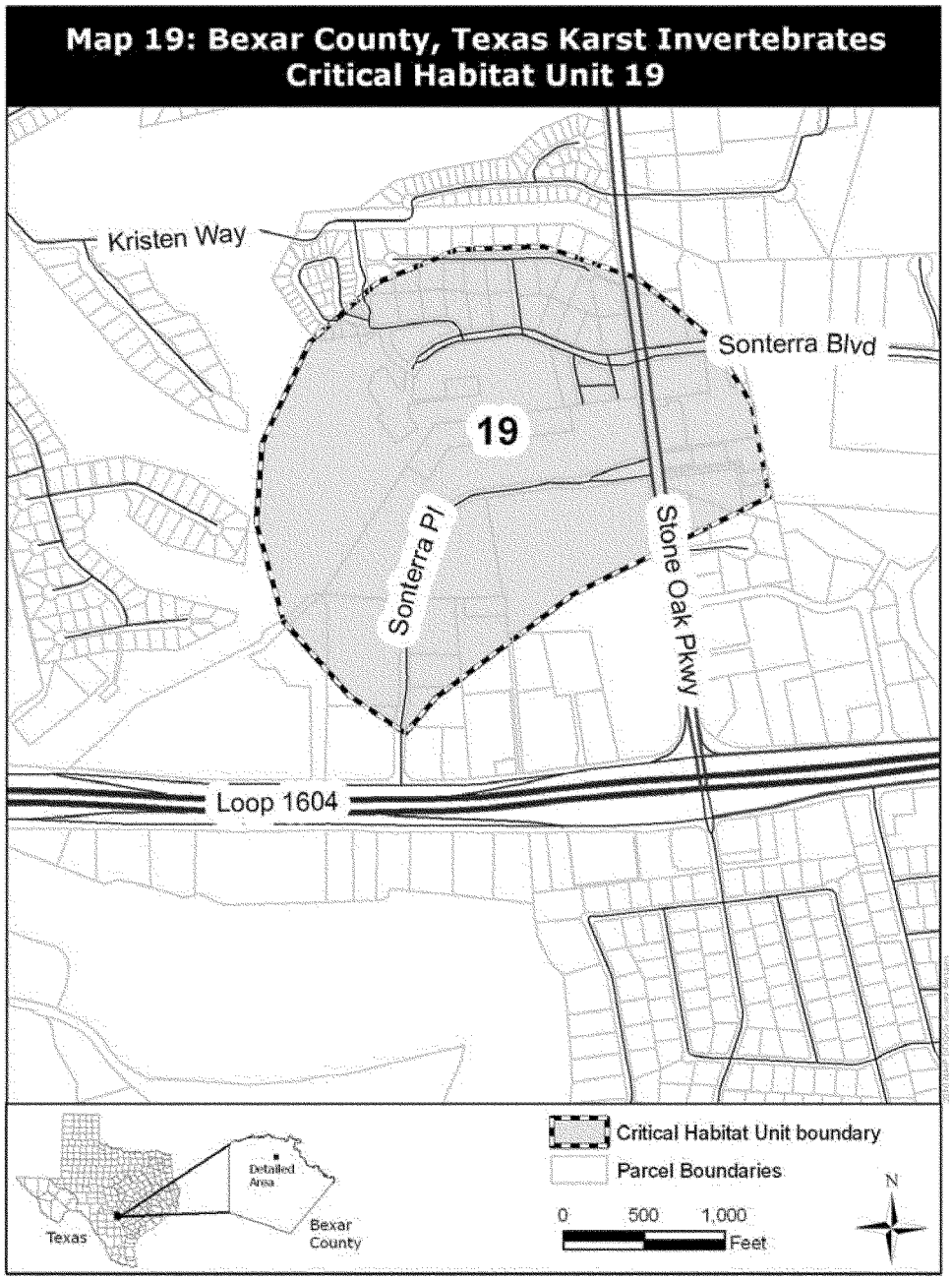
(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 5 of Units 5, 6, and 17 is provided at subparagraph (8)(ii) of the entry for the Helotes mold beetle in this paragraph (i).

(21) Units 19: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

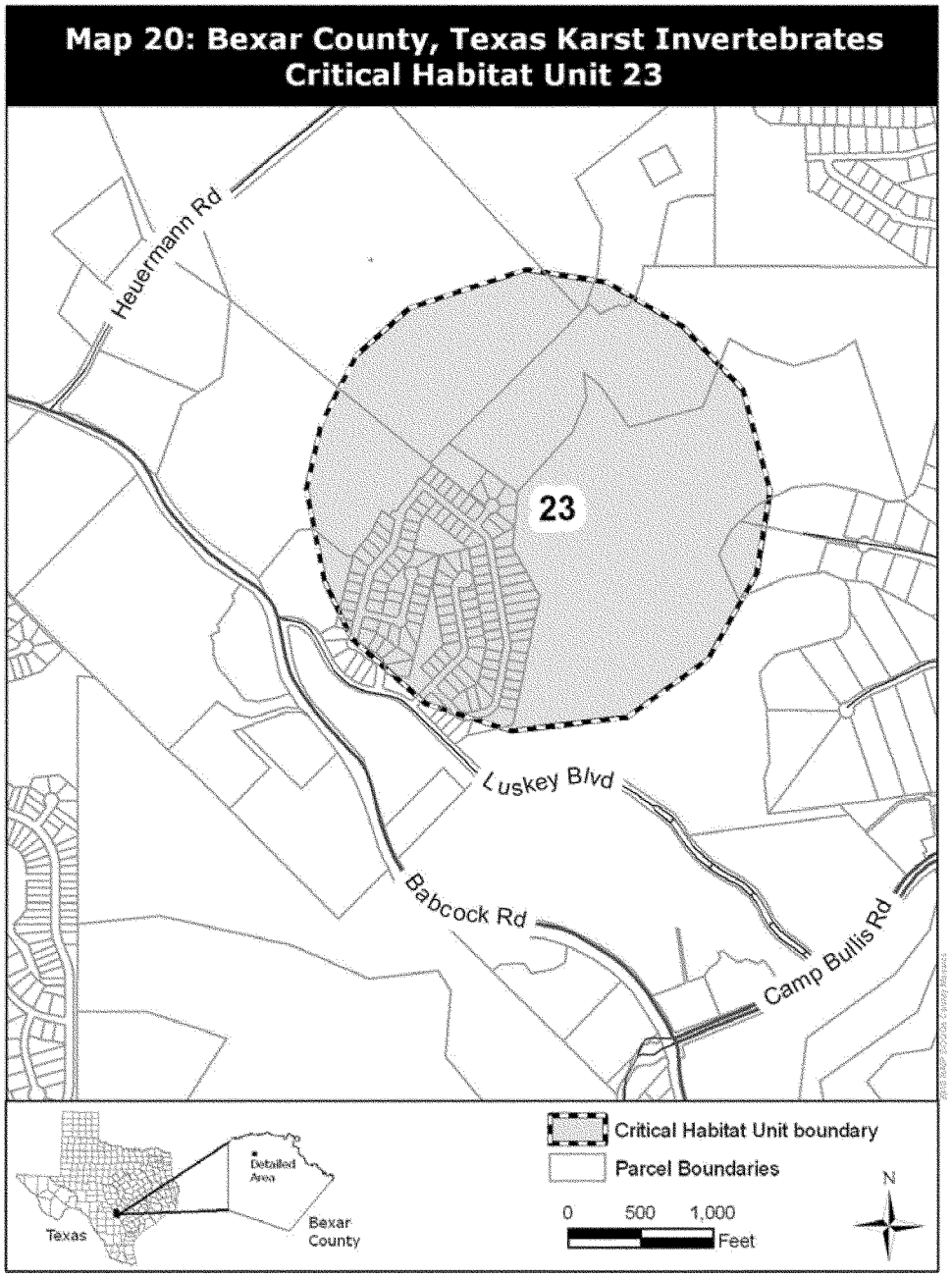
(ii) **Note:** Map 19 of Unit 19 follows:




(22) Unit 23: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

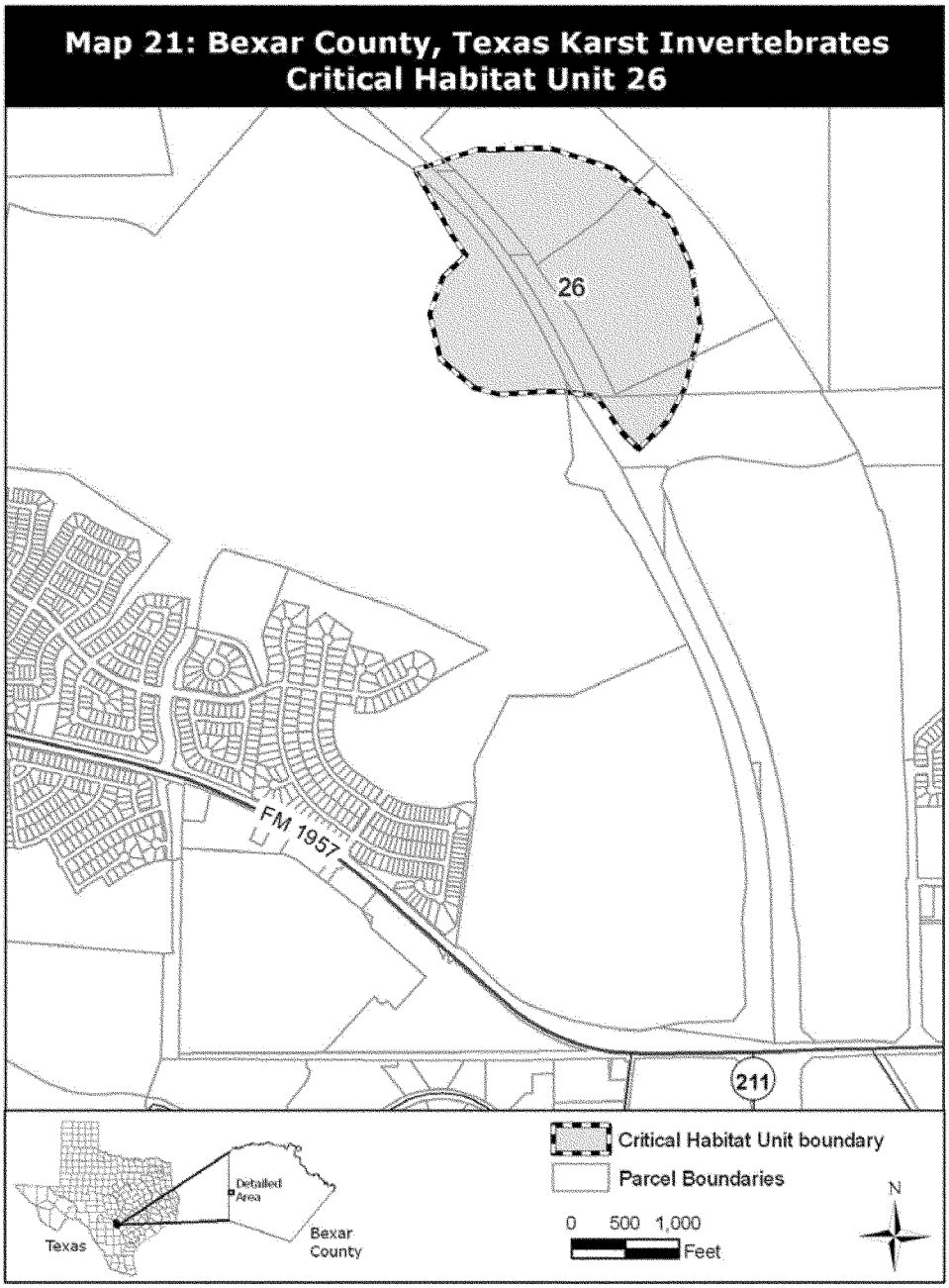
(ii) **Note:** Map 20 of Unit 23 follows:




(23) Unit 26: Bexar County, Texas.

(i) [Reserved for textual description of unit.]

(ii) **Note:** Map 21 of Unit 26 follows:




* * * * *

Dated: February 7, 2011.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011–3038 Filed 2–18–11; 8:45 am]

**BILLING CODE 4310–55–C**

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**H.R. 366/P.L. 112-1**
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 31, 2011)

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